Supreme Court, U.S.
FILED

03 208 AUG 4 2003

No. _____

In the
Supreme Court of the United States

GOSPEL MISSIONS OF AMERICA, ET AL.,
Petitioners,

v.

THE CITY OF LOS ANGELES, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JAMES H. FOSBINDER
Counsel of Record

RHONDA M. FOSBINDER
FOSBINDER & FOSBINDER
A LAW CORPORATION
415 DAIRY ROAD, SUITE E #336
KAHULUI, HI 96732
(808) 244-1524

Counsel for Petitioners

RECEIVED
AUG 6 2003
OFFICE OF THE CLERK
SUPREME COURT, U.S.

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

194 81

QUESTIONS PRESENTED FOR REVIEW

Can an organization that litigated and obtained a declaration as to the facial invalidity of numerous provisions of a Charitable Solicitations Ordinance be effectively prevented from enforcing that declaration of facial unconstitutionality in a later litigation over an amended version of the same Ordinance, or should the law of the case prevent such a result?

What is the long-term effect of a declaration of facial unconstitutionality of certain provisions of an Ordinance regulating First Amendment protected activity? In other words, can the City avoid any long-term effect of such a declaration just by re-numbering Ordinance sections and ceasing to apply some of the provisions to the organization that was successful in obtaining the declaration of facial unconstitutionality?

Did the Ninth Circuit Court of Appeals effectively eviscerate a hard won declaration of facial unconstitutionality of various provisions of a Charitable Solicitations Ordinance by making a convoluted application of res judicata and related doctrines to a new, slightly amended version of the same Ordinance, in a manner that contradicts with the law of this Court and other Circuits?

Can new members of an organization, who had no relationship to the organization during an earlier litigation that resulted in entry of an injunction and a declaration of the facial invalidity of the majority of provisions of a Charitable Solicitations Ordinance, be barred from challenging an amended version of the Charitable Solicitations Ordinance that is being applied to their own activities, just because they have joined the organization that was involved in the earlier litigation?

PARTIES TO THE PROCEEDING

The following, and no others, are parties to the instant proceedings:

Petitioners GOSPEL MISSIONS OF AMERICA, a religious corporation; and ERICH WAGNER II; RAY AUSTIN; RON BARBER; P.J. BOURBONNAIS; JAY BOWMAN, JR.; WILLIAM CAMPBELL; WARREN DALY; EDWARD EBELING; ALLAN GATHUNGU; DOUGLAS GORDEN; JEREMY HARSH; KELVIN JACKSON; JAMES KAHL; JOHN LOVE; GEORGE LOWNES; MICHAEL MEFFORD; JOHN PROCTOR; JAMES ROBERTS; JAMES RODGERS; DAVID ROOT; DONALD STACH; JAMES VANDERPOEL; BRENDA WAGNER; PAUL WINN; THOMAS WISE; RUTH WASHINGTON; and RAY ZEDD, who were the Plaintiffs and Appellants in the courts below.

Respondents are the CITY OF LOS ANGELES; LOS ANGELES WORLD AIRPORTS; HENRY ACOSTA, as an individual and in his official capacity as Officer for the Airport Police Bureau; SHIRLEY FLUCUS, as an individual and in her official capacity; and RONALD E. MARBREY, as an individual and in his official capacity, each of whom were the Defendants and Appellees in the courts below.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vii

PETITION FOR WRIT OF CERTIORARI 1

I. CITATIONS TO OPINIONS BELOW 1

II. JURISDICTIONAL STATEMENT 1

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

IV. STATEMENT OF THE CASE 3

V. REASONS FOR GRANTING THE PETITION 7

A. Summary of Argument and Introduction . . . 7

B. When An Organization Obtains A Declaration Of Facial Unconstitutionality As To Certain Provisions Of An Ordinance, And The Amended Ordinance Fails To Remove Them, The Organization Should Be Allowed To Enforce Its Own Favorable Declaration, Or The Prior Adjudication Is Rendered Meaningless 10

C. The Ninth Circuit Created Precedent That Is Contrary To Established Law In Holding That Gospel Missions Does Not Have Standing To Challenge The Endorsement Provisions Because It Did Not Apply For Endorsement; Gospel Missions Is Not Required Under First Amendment Jurisprudence To Apply For Endorsement First, And The Declaration of The Facial Unconstitutionality Of The Disclosure Of The City's Opinion of The Solicitor Should Have Been Applied In GMA's Favor 13

D. Can Joining An Organization That Previously Engaged In Litigation Over A Previous Version Of An Ordinance Obliterate One's Rights To Challenge An Amended Version Of That Ordinance, When The Amended Ordinance Directly Regulates One's Own First Amendment Protected Activities? 14

E. The Appellate Panel Completely Ignored Gospel Missions' Challenge To Section 44.04, Which Is The Same In Substance As A Section Expressly Declared Facially Unconstitutional In GMA I, And GMA Should Therefore Be Entitled To Enforce On Its Own Behalf 15

F. The Law Of The Case Should Have Prevented An Outcome That Eviscerates The Long Term Effect Of A Declaration Of Facial Unconstitutionality Of Parts Of The Los Angeles Charitable Solicitations Ordinance 18

VI. CONCLUSION 19

APPENDIX

Appendix A
Ninth Circuit Opinion - 5/5/03 . . . . . 1a

Appendix B
Ninth Circuit Judgment - 5/5/03 . . . . . 17a

Appendix C
Ninth Circuit Order - 12/20/02 . . . . . 19a

Appendix D
Ninth Circuit Order - 9/5/02 . . . . . 22a

Appendix E
Ninth Circuit Opinion - 8/8/02 . . . . . 23a

Appendix F
District Court Order and Judgment - 5/11/00 . . . . 37a

Appendix G
District Court Opinion - 1/10/97 . . . . . 63a

Appendix H
Los Angeles Cal. Code, Ch. IV, Art. 4, Philanthropy,
§§ 44.00-44.15 . . . . . 119a

Appendix I
Pre-1997 Charitable Solicitations Ordinance 138a

TABLE OF AUTHORITIES

Cases:

A & A Concrete, Inc. v. White Mountain Apache Tribe,
781 F.2d 1411 (9th Cir. 1986) 18

Babbitt v. United Farm Workers National Union,
442 U.S. 289, 99 S.Ct. 2301,
60 L.Ed.2d 895 (1979) 11

City of Lakewood v. Plain Dealer Pub. Co.,
486 U.S. 750, 108 S.Ct. 2138,
100 L.Ed.2d 771 (1988) 11

Epperson v. Anderson,
393 U.S. 97, 89 S.Ct. 266 21, L.Ed.2d 228 (1968) . 11

Freedman v. Maryland,
380 U.S. 51, 13 L. Ed. 2d 649,
85 S. Ct. 734 (1965) 11

Gospel Army v. Los Angeles,
331 U.S. 543, 67 S.Ct. 1428,
91 L.Ed. 1662 (1947) 8

Gospel Missions of America, et al. v. Bennett, et al.,
951 F.Supp 1429 (C.D. Cal. 1997) . . . . . *passim*

Gospel Missions of America v. City of Los Angeles,
328 F.3d 548 (9th Cir. 2003) 1

Gospel Missions of America v. City of Los Angeles,
298 F.3d 1099 (9th Cir. 2002) 1

In re Dart, 172 Cal. 47, 155 P. 63 (1916) 8

Pit River Home and Agric. Coop. Ass'n v. United States,
30 F.3d 1088 (9th Cir.1994) 19

San Francisco Democratic Central Committee v. Eu,
826 F.2d 814 (9th Cir. 1987),
aff'd 489 U.S. 214, 109 S.Ct. 1013,
103 L.Ed.2d 271 (1989) 11-12

United States v. Maybusher,
735 F.2d 366 (9th Cir.1984),
cert. denied, 469 U.S. 1110, 105 S.Ct. 790,
83 L.Ed.2d 783 (1985) 18

Virginia v. American Booksellers Ass'n, Inc.,
484 U.S. 383, 108 S.Ct. 636, 642,
98 L.Ed.2d 782 (1988) 11

Statutes:

28 U.S.C. § 1291 2

28 U.S.C. Section 1331, 1343(a)(3) and (4) 1

28 U.S.C. §§ 2201 and 2202 1

Federal Rules of Appellate Procedure Rules 1, 4(a) . . . 2

Los Angeles Municipal Code Sections
44.00-44.15 (1997),
the "Charitable Solicitations Law" . . . . . *passim*

Los Angeles Municipal Code Sections
44.00-44.15 (pre-1997),
the "Old Charitable Solicitations Law" 3

United States Constitution First Amendment . . . . . *passim*

United States Constitution Fourteenth Amendment,
Section 1 3

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully seeks certiorari to review the Opinion by the Ninth Circuit Court of Appeals entered on May 5, 2003, which Opinion amended that entered on August 8, 2002, after supplemental briefing by all parties pursuant to an Order of December 20, 2002.

I.

CITATIONS TO OPINIONS BELOW

The Opinion of the Ninth Circuit Court of Appeals is found at Docket No. 00-55993, *Gospel Missions of America v. City of Los Angeles*, 328 F.3d 548 (9th Cir. 2003) [*Appendix "E"*] (superceding *Gospel Missions of America v. City of Los Angeles,* 298 F.3d 1099 (9th Cir. 2002) [*Appendix "B"*]), and the *Order Denying Plaintiffs' Motion for Summary Judgment and Granting Summary Judgment In Favor of Defendants* by the Central District of California is found at Docket No. CV-00-09544-JSL [*Appendix "A"*]. The District Court did not publish an opinion in this case. The pertinent rulings appear in the attached appendices, as noted.

II.

JURISDICTIONAL STATEMENT

The District Court for the Central District of California had subject matter jurisdiction pursuant to 28 U.S.C. Section 1331, 1343(a)(3) and (4), this being an action arising under the federal constitution and laws, and under 28 U.S.C. §§ 2201 and 2202, this being an action for declaratory relief. On May 12, 2000, the District Court for the Central District of California entered its Order Denying Plaintiffs' Motion for

Summary Judgment and Granting Summary Judgment in Favor of Defendants. [*Appendix "A"*] Petitioners herein appealed the District Court's Order, over which the Ninth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291, and Federal Rules of Appellate Procedure Rules 1, 4(a), since the Order appealed from was a final order of dismissal of the entire action.

The Ninth Circuit Court of Appeals entered its Opinion affirming in part, vacating in part, and remanding to the District Court on August 8, 2002. [*Appendix "B"*] On September 5, 2002, the Ninth Circuit Court of Appeal requested a response from Defendants/Appellees to Plaintiffs/Appellants' Petition for Rehearing and Request for Rehearing En Banc [*Appendix "C"*]. After submission of a response by Defendants/Appellees, on December 20, 2002, the Ninth Circuit Court of Appeal entered an Order requesting supplemental briefing on the issues set forth in that Order. [*Appendix "D"*] On May 5, 2003, the Ninth Circuit entered an amended Order and affirming in part, vacating in part, and remanding to the District Court. [*Appendix "E"*]. Judgment was entered on the same date. [*Appendix "F"*]

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble, and to petition the government for a redress of grievances.

The Fourteenth Amendment to the United States Constitution, Section 1:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws.

Los Angeles Municipal Code Sections 44.00-44.15 (1997), the "Charitable Solicitations Law":

[See, *Appendix "F"*]

Los Angeles Municipal Code Sections 44.00-44.15 (pre-1997), the "Old Charitable Solicitations Law":

[See, *Appendix "G"*]

IV.

STATEMENT OF THE CASE

Plaintiff Gospel Missions of America ("GMA") is a small Christian religious and missionary organization registered as a California non-profit corporation located in Rowland Heights, California. GMA serves the needs of the homeless

by providing food, shelter, clothing and money directly to those homeless individuals who join the organization. The individual plaintiffs are members of GMA who live in houses owned by the church, and who comprise a mission community that eats and prays together.

To support themselves, the members solicit donations at various locations throughout the City and provide information about their organization to other individuals. GMA contends now and has always contended that its activities are evangelical, religious, and missionary activities, not "charitable" in the sense of soliciting funds on behalf of some independent charity. GMA members solicit funds only for their own support, much like local churches hold public bake sales or craft fairs to raise money for their own support.

In March of 1993, Plaintiffs/Appellants Gospel Missions of America and its then - current members (hereinafter, "GMA I") filed an action in the District Court for the Central District of California challenging the constitutionality of the City of Los Angeles' (hereinafter, the "City") Charitable Solicitations Ordinance (Los Angeles Municipal Code Chapter IV, Article 4, Sections 44.00-44.15), and the County of Los Angeles' Charitable Solicitations Laws, as well as for an unlawful search and seizure that had occurred in the form of a dawn raid on the GMA residences.

Just prior to trial, after nearly four years of litigation, that action was bifurcated into the issues of liability and damages, and the Honorable Kim McLane Wardlaw struck down on cross summary judgment motions the majority of the City's (and the County's, although that Law is not at issue here) Charitable Solicitations Law as facially unconstitutional.

On January 10, 1997, Judge Wardlaw entered an order finding in favor of GMA on the liability portion of the lawsuit

and enjoined the City and County from enforcement of the provisions of the Law that had been declared facially unconstitutional. The injunction is published at *Gospel Missions of America, et al. v. Bennett, et al.*, 951 F.Supp 1429 (C.D. Cal. 1997). The damages portion of the lawsuit was settled shortly thereafter at a conference with Judge Wardlaw and the injunction was not appealed, thereby terminating the action.

In GMA I, Judge Wardlaw specifically found that GMA and its members had standing to challenge the entire Charitable Solicitations Ordinance, including, by implication (since she struck down the subject provisions) the provisions applicable to "professional fundraisers". GMA, however, is no longer being allowed to challenge the professional fundraiser and other such provisions, even though the amended 1997 Ordinance contains both identical and similar provisions to those struck down by Judge Wardlaw as facially unconstitutional and not appealed by the City.

According to the City of Los Angeles, in order for GMA, a registered non-profit Christian religious organization, to solicit donations for itself, it must obtain an "Information Card". LAMC § 44.09. To obtain an Information Card, it must submit a detailed application and follow-up report providing a myriad of disclosures about its operations, members, purposes, uses of contributions, receipts, expenses, and distributions of proceeds. LAMC §§ 44.04, 44.10.

Failure to obtain an Information Card has in the past not only resulted in the inability to solicit donations, but also more serious repercussions. In May of 1992, for example, the GMA church houses were raided at gunpoint in the wee hours by City and County law enforcement officers after GMA refused to obtain an Information Card in order to be allowed to solicit monies for itself. The affidavit in support

of the search and seizure warrant stated in part that, drugs, guns and "articles commonly found in residences of individuals associated with the op ations of illicit charitable organizations" would be found, a ough no such items were actually found.

From the date of the passage of the 1997 amendments to the Charitable Solicitations Ordinance to early to mid-1998, the City of Los Angeles did not seek to enforce the Charitable Solicitations Ordinance against GMA. Although LAX issued official warnings in July of 1998 that "Information Cards", the necessary licenses required for engaging in charitable solicitations under the Charitable Solicitations Laws, would be required of all solicitors, no further action was taken until May of 1999.

In May of 1999, Defendant Acosta, on behalf of Los Angeles World Airports, specifically threatened GMA members with immediate arrest for not having the L.A. Information Cards. GMA members were forced to withdraw from the airport for nearly two months, suffering substantial monetary losses as a result, since their funding is derived almost exclusively from their solicitations on their own behalf, particularly at the airport.

After counsel for GMA threatened immediate legal action, the City of L.A. determined that GMA was not a "professional fundraiser" under the ordinance, and that therefore only a portion of the application requirements for the Information Card had to be completed. Under that agreement between counsel, GMA submitted an abbreviated "Notice of Intention" with a reservation of their constitutional rights.

The City continues to require the obtaining of an Information Card by GMA in order for its members to be

allowed to solicit donations for their own church, as well as a "Report of Results" and financial disclosures pursuant to the Charitable Solicitations Law, even though the District Court in "GMA I" expressly found that the forced disclosure of information about the City's opinion of the "nature and worthiness" of the solicitation activity, and the forced disclosure of various financial requirements, were facially unconstitutional. *Gospel Missions v. Bennett*, 951 F.Supp. 1429, 1443-1447, 1451 (C.D. Cal. 1997).

Although some of the offending provisions were removed or reworded, many of the provisions found facially unconstitutional in GMA I remain in the 1997 ordinance, either literally or in concept. Nonetheless, because of the Ninth Circuit's unusual reading of the law of preclusion, estoppel, and study in First Amendment jurisprudence, neither GMA nor its members (whether they were members at the time of the previous litigation or not), are being allowed to enforce the old declaration or challenge the new law.

V.

REASONS FOR GRANTING THE PETITION

A. Summary of Argument and Introduction

This Petition centers on the issue of the scope of a litigant's ability to enforce a declaration of facial unconstitutionality of an Ordinance regulating protected First Amendment Activity by a protected group, charitable solicitations by a church. How finely should the "hairs" of the declaration of facial unconstitutionality be split in interpreting that declaration? For example, in GMA I, the court declared that the forced disclosure of information about the City's opinion of the "nature and worthiness" of the

particular charitable solicitation was facially unconstitutional, (*GMA I*, 951 F.Supp. at 1445, 1451), yet in GMA II the Ninth Circuit refused to allow GMA to challenge the continued endorsement provisions of the Amended Ordinance. Alternatively, should the organization or its new members be able to challenge the new, amended Ordinance regardless of the prior declaration? Surely it cannot be correct that neither a venue of relief is available, effectively rendering the substance of the 1997 opinion meaningless and unenforceable.

The subject matter of the action, the Los Angeles Charitable Solicitations Act, applies to every type of the innumerable charitable organizations in Los Angeles. Even though Gospel Missions was successful in finally having most of the Charitable Solicitations Ordinance declared facially unconstitutional in 1997, because of the unusual application of First Amendment standing and res judicata law by the appellate panel, Gospel Missions is now rendered powerless to enforce the underpinnings of the 1997 declaration of facial unconstitutionality it obtained for itself and others, even though in many instances the provisions deemed facially unconstitutional in 1997 remain the same as when challenged again today.

For nearly 90 years the Charitable Solicitation Ordinance in Los Angeles has been considered constitutionally suspect by considering courts. See, e.g., *Gospel Army v. Los Angeles*, 331 U.S. 543, 67 S.Ct. 1428, 91 L.Ed. 1662 (1947); *In re Dart*, 172 Cal. 47, 155 P. 63 (1916). The Los Angeles Charitable Solicitation Ordinance is important and has been a model for other cities. The appellate panel's standing and res judicata determination in this case conflicts with other precedent concerning standing and res judicata in First Amendment cases, and virtually ensures that the litigation

over this important ordinance may continue another 90 years, although not by GMA or any of its members, apparently.

Under the Ninth Circuit Court's decision in this case, an organization and its members who obtain a declaration of facial invalidity of an Ordinance that regulates what is unquestionably First Amendment protected activity, Charitable Solicitations, is left with no ability to enforce the declaration of facial invalidity as to certain provisions against the City, just because the City simply decided not to enforce all of the subject amended provisions against the organization and its members. It also cannot challenge any amended versions of the law.

In its first opinion, the appellate panel pointed out that the application of the legal issues of standing and claim preclusion in First Amendment cases "have not been a model of clarity." [Appendix A (Opinion, p. 11565, ¶ 4)] The "amended" Opinion and Order by the Ninth Circuit muddies the waters even more, and places a chokehold on the rights of First Amendment litigants to enforce their own favorable decisions.

B. When An Organization Obtains A Declaration Of Facial Unconstitutionality As To Certain Provisions Of An Ordinance, And The Amended Ordinance Fails To Remove Them, The Organization Should Be Allowed To Enforce Its Own Favorable Declaration, Or The Prior Adjudication Is Rendered Meaningless

What is the long term effect of a declaration of facial unconstitutionality in First Amendment jurisdprudence? Even though the "professional fundraiser" provisions in the Los Angeles Charitable Solicitations Ordinance were explicitly declared facially unconstitutional by GMA I (**"The City Ordinance provisions regarding professional fundraiser are constitutionally infirm ... consequently Section 44.14 is unconstitutional on its face", *GMA I*, 951 F.Supp. at 1447**), the Ninth Circuit refused to allow GMA continued standing to enforce that declaration against the City when the City failed to delete the facially unconstitutional provisions from its 1997 Amended Ordinance. The Ninth Circuit reached this result on the grounds that the City decided not to "enforce" those provisions anymore against GMA. Then what was the point of obtaining a declaration of facial unconstitutionality? The declarations in GMA I are rendered utterly meaningless, a waste of time and money.

The holdings of the Ninth Circuit in this case with respect to GMA's standing conflict directly with previous U.S. Supreme Court and Ninth Circuit decisions concerning standing to challenge "non-enforced" statutes that implicate First Amendment rights, as well as the right to claim preclusion regarding statutes declared facially unconstitutional. Consider the following precedents:

City of Lakewood v. Plain Dealer Pub. Co., 486 U.S. 750, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988) (granting standing to newspaper publisher to contest never-enforced municipal ordinance requiring licensing for placement of newsracks on public property);

Virginia v. American Booksellers Ass'n, Inc., 484 U.S. 383, 108 S.Ct. 636, 642, 98 L.Ed.2d 782 (1988) (conferring standing to booksellers to challenge never-enforced statute restricting display of sexually explicit literature);

Epperson v. Anderson, 393 U.S. 97, 101-102, 89 S.Ct. 266, 268-69, 21 L.Ed.2d 228 (1968) (teacher granted standing to challenge a statute prohibiting the teaching of evolution, even though the statute had never been enforced against anyone during its entire 40 years on the books);

Babbitt v. United Farm Workers National Union, 442 U.S. 289, 298, 99 S.Ct. 2301, 2309, 60 L.Ed.2d 895 (1979) (standing granted despite non-enforcement of challenged statute);

Freedman v. Maryland, 380 U.S. 51, 56, 13 L. Ed. 2d 649, 85 S. Ct. 734 (1965) (standing in First Amendment area granted even where permit not applied for);

San Francisco Democratic Central Committee v. Eu, 826 F.2d 814, 822 (9th Cir. 1987), aff'd 489 U.S. 214, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989) (standing found despite State's total non-enforcement against political organization of challenged elections code provisions and no record shown that provisions were commonly and notoriously violated). The Ninth Circuit's own decision in the instant action conflicts directly with the *San Francisco Democratic Central*

Committee v. Eu holding, which has never been reversed, as well as this Court's established law.

Judge Wardlaw in GMA I did not declare the professional fundraiser sections unconstitutional *as applied to GMA*, she declared them unconstitutional on their face and the City of L.A. ignored that decision, settling out of court rather than appealing. Now, the City is getting away with ignoring that decision by simply stating that it does not intend to *enforce* its ongoing facially unconstitutional provisions against GMA.

It surely cannot be right, and is patently not right under the law, that a party can obtain a decision, not appealed by the adverse party, that expressly declares ordinance "X Y & Z" unconstitutional on its face, and then not be able to challenge the continued existence of "X Y & Z" in a purportedly "amended" ordinance. If the provisions have been declared unconstitutional on their face and that decision stands, they are unconstitutional **on their face**, period – i.e., the City's eventual decision to not *enforce* them against the original party should be irrelevant.

The declaration of facial unconstitutionality in the district court's opinion in GMA I has certainly been ignored by the City, which, under a correct application of the doctrine of claim preclusion and res judicata, is surely not right. The alleged "failure to enforce" [Opinion, p. 11568] the facially unconstitutional section 44.14 may get the City out of actual contempt of the injunction against "enforcement", but under clearly established standing law ignored by the Ninth Circuit it absolutely should not prevent Gospel Missions from enforcing the declaration of facial unconstitutionality it obtained in earlier litigation.

C. The Ninth Circuit Created Precedent That Is Contrary To Established Law In Holding That Gospel Missions Does Not Have Standing To Challenge The Endorsement Provisions Because It Did Not Apply For Endorsement; Gospel Missions Is Not Required Under First Amendment Jurisprudence To Apply For Endorsement First, And The Declaration of The Facial Unconstitutionality Of The Disclosure Of The City's Opinion of The Solicitor Should Have Been Applied In GMA's Favor

As already stated, in GMA I, which was not appealed by the City, the district court declared that the forced disclosure of information about the City's opinion of the "nature and worthiness" of the particular charitable solicitation was facially unconstitutional, *GMA I,* 951 F.Supp. at 1445, 1451). Although it did not specify the specific section about "endorsement" as being facially unconstitutional, it nonetheless made a declaration of law that logically applies equally to the endorsement requirement.

Nonetheless, in GMA II the Ninth Circuit refused to allow GMA to challenge the ongoing endorsement provisions of the Amended Ordinance, even though the endorsement provisions require disclosure of whether or not the City approves of the particular solicitation activity. The very same First Amendment standing arguments and law cited just above (holding that neither *applying* for the license or right nor enforcement of the same is a prerequisite to standing to challenge the facial constitutionality of a law) apply equally

with respect to the endorsement provisions in the amended ordinance.

The Ninth Circuit opined that Gospel Missions does not have standing to challenge Section 44.15(b) regarding the endorsement standards because it never actually sought endorsement. As with the professional fundraiser provisions discussed above, Gospel Missions has always contended that the endorsement requirements are unconstitutional, and therefore challenged them rather than sought to comply with them. To provide the extensive information required to obtain endorsement would be to give up the very rights Gospel Mission has sought to protect in GMA I and GMA II, and to eviscerate the declaration that provisions regarding the "nature and worthiness" of a solicitor are facially unconstitutional. (GMA I, 951 F.Supp at 1445, 1451.).

D. Can Joining An Organization That Previously Engaged In Litigation Over A Previous Version Of An Ordinance Obliterate One's Rights To Challenge An Amended Version Of That Ordinance, When The Amended Ordinance Directly Regulates One's Own First Amendment Protected Activities?

Twenty of the twenty-six plaintiffs in the instant action were not parties in the prior action, yet they can not under the Ninth Circuit's opinion challenge the amended Charitable Solicitations Law, even though the new law is being applied to them for the first time.

Thus, under the Ninth Circuit's precedent, anyone who joins an organization as a member *after* the end of a litigation is forever barred from ever challenging any amended provision of the law, just because they joined the organization. If the petitioners had not joined GMA and tried to solicit under the Charitable solicitations law they could certainly challenge the Amended law, "Claim preclusion does not bar this claim from being raised by a non-party to GMA I", but because they joined GMA, their rights are taken away. The plaintiffs ask this Court not to let that precedent stand.

E. The Appellate Panel Completely Ignored Gospel Missions' Challenge To Section 44.04, Which Is The Same In Substance As A Section Expressly Declared Facially Unconstitutional In GMA I, And GMA Should Therefore Be Entitled To Enforce On Its Own Behalf

In rendering the subject opinion, the Ninth Circuit makes no mention of, and completely ignores, GMA's renewed challenge to Section 44.04, which was declared unconstitutional on its face in GMA I. *GMA I*, 951 F.Supp. at 1443. Judge Wardlaw in GMA I expressly addressed the issue of some of the informational disclosure requirements in the City's Charitable Solicitations Ordinance, and found them to be "considerably broader and more intrusive than those at issue in City of Houston". *GMA I*, 951 F.Supp. 1443.

In GMA I the district court wrote:

> Although most of section 44.04's disclosure requirements directly relate to the planned charitable solicitation, certain provisions paint with a much

> broader brush. Subsection (f) requires disclosure of a "detailed financial statement" for the most recent year, and subsection (g) demands the name, address, and telephone number of each officer and member of the applicant's board of directors or trustees. L.A.M.C. § 44.04(f), (g). Such disclosures directly expose the applicant's internal operations to public scrutiny and are unrelated to any legitimate governmental interest, including the City's stated interest in preventing fraudulent solicitations. "The potential chilling effect [of these disclosure requirements] on the exercise of [protected] First Amendment rights ... is manifest, together with the invasion of privacy." *Holy Spirit Ass'n,* 582 F.Supp. at 601.

Id.

This judgment is restated at p. 1450 of GMA I, where the district court again holds that "disclosure requirements that have no bearing on the charitable solicitation impermissibly chill and intrude upon protected First Amendment rights. [citation omitted]" The district court goes on to hold that a "requirement that applicants file a 'specific statement of all contributions collected or received within the [preceding] calendar year'" along with "the names and addresses of all persons receiving ... compensation... from such contributions" is facially invalid.

In 1997, the City amended Section 44.04 by deletion of the section numbered "44.04(g)", but recreated the same provisions in a nearly identical section re-numbered as "44.04(b)(1)-(4)". *Appendix H.* The re-numbered sections require the exact same information, from an even broader number of persons, that was declared facially unconstitutional

in GMA I. Regardless of how the City rearranges its Amended Ordinance, to the extent the Amended Ordinance continues to require either a "detailed financial statement", a "statement of all contributions collected in the [preceding] calendar year, "demand the name, address, and telephone number of each officer and member of the applicant's board of directors or trustees", or require "the names and addresses of all persons receiving ... compensation... from such contributions", it runs afoul of the judgment on that issue made in GMA I.

At the new Section 44.04, the Amended Ordinance deletes the address and telephone number of each officer and member of the board of directors or trustees, but adds a lengthy section requiring instead the names and addresses of not only the person registering but also of the partners of the person, and of all association members (up to ten, if there are more than ten members.) LAMC 44.04(b)(1)-(4).

This is exactly the same type of broad information requirement declared facially unconstitutional in GMA I, so that the Ninth Circuit's refusal to allow or to even acknowledge GMA's renewed challenge to those portions of the Charitable Solicitations Ordinance based on its earlier favorable decision leaves GMA, once again, with a meaningless, unenforceable declaration of facial unconstitutionality.

F. The Law Of The Case Should Have Prevented An Outcome That Eviscerates The Long Term Effect Of A Declaration Of Facial Unconstitutionality Of Parts Of The Los Angeles Charitable Solicitations Ordinance

Courts have held consistently that law of the case applies to rehearing in any court of the *same or higher* level: "Under the law of the case doctrine, a court is precluded from re-examining an issue previously decided by the same court, or a higher appellate court, in the same case." *United States v. Maybusher*, 735 F.2d 366, 370 (9th Cir.1984), *cert. denied*, 469 U.S. 1110, 105 S.Ct. 790, 83 L.Ed.2d 783 (1985), cited in *A & A Concrete, Inc. v. White Mountain Apache Tribe,* 781 F.2d 1411, 1418 (9th Cir. 1986). In the instant case, the principles iterated in GMA I were ignored in the making of the "Amended" Ordinance, and the law of the case should have prevented the City from being able to relitigate those issues.

The law of the case issue is particularly pertinent here because, as discussed, not all of the current plaintiffs were plaintiffs in GMA I, and therefore the City's and the Ninth Circuit's use of collateral estoppel and res judicata *against* those new plaintiffs should not be allowed at all: "While collateral estoppel may in some cases be available to estopp a party to a prior proceeding from denying what was there judicially determined, such a judgment cannot be pleaded offensively against a non-party to the prior action by one who was a party." *A & A Concrete, Inc. v. White Mountain Apache Tribe*, 781 F.2d 1411, 1417 (9th Cir. 1986).

Pursuant to the law of the case doctrine, "[a] decision on a **factual or legal issue** must be followed in all subsequent proceedings in the same case in the trial court ... " *Pit River Home and Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1096 (9th Cir.1994) (quotations and citation omitted). The prior finding should be followed unless "[1] the evidence on a subsequent trial was substantially different, [2] controlling authority has since made a contrary decision of the law applicable to such issues, or [3] the decision was clearly erroneous and would work a manifest injustice." *Id.* at 1096-97 (quotation and citation omitted).

None of those apply here, and the Petitioners contend that the law of the case set in GMA I should have been used in their favor to prevent the contrary outcome rendered by the Ninth Circuit in this case.

VI.

CONCLUSION

This case involves the rights of litigants with respect to amended versions of laws previously struck down as facially unconstitutional. In sum, the Ninth Circuit's Opinion in this Case eviscerates a litigant's right to enforce the substance of a declaration of facial unconstitutionality whenever the law declared unconstitutional is either minimally amended or ceases to be enforced against the litigant. It also takes away the rights of new litigants who are subject to the amended law to challenge the amended law, just because they later joined the organization that had previously challenged an earlier version of the same law.

Petitioner contends that in a number of ways, the Ninth Circuit's Opinion in this case conflicts with the precedent set

by this Court and other Circuits, and creates a new standard in First Amendment jurisprudence that is fundamentally wrong and that severely chills the rights of those engaged in First Amendment protected activities.

Based on all of the foregoing, Petitioner respectfully submits that a grant of certiorari is appropriate in this important matter.

DATED: August 4, 2003

Respectfully submitted,

JAMES H. FOSBINDER
Counsel of Record
RHONDA M. FOSBINDER
FOSBINDER & FOSBINDER
A LAW CORPORATION
415 Dairy Road, Ste. E #336
Kahului, HI 96732
(808)244-1524 tel.
(808)244-3971 fax
Attorneys for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00-55993

[Filed May 5, 2003]

Gospel Missions of America, a religious corporation; Erich Wagner, II; Ray Austin; Ron Barber; P. J. Bourbonnais; Jay Bowman, Jr.; William Campbell; Warren Daly; Edward Ebeling; Allan Gathungu; Douglas Gorden; Jeremy Harsh; Kelvin Jackson; James Kahl; John D. Love; George Lownes; Michael Medford; John Proctor; James C. Roberts; James Rodgers; David Root; Donald Stach; James Vanderpoel; Brenda Wagner; Paul Winn; Thomas Wise; Ruth Washington; Ray Zedd, *Plaintiffs-appellants*,	)
v.	)
City of Los Angeles; Los Angeles Work Airports; Henry Acosta, as an individual and in his official capacity as Officer for the Airport Police Bureau; Shirley Flucus, as an individual and in her official capacity; Ronald E. Marbrey, as an	)

individual and in his official capacity,)
Defendants-Appellees.)
)

JUDGES: Before Alfred T. Goodwin, J. Clifford Wallace and Sidney R. Thomas, Circuit Judges. Opinion by Judge Wallace.

OPINION

WALLACE, Senior Circuit Judge

Gospel Missions of America (Gospel Missions) appeals from a summary judgment in favor of the City of Los Angeles (City) in an action stemming from the City's attempt to enforce against Gospel Missions an amended version of its charitable solicitations law. Gospel Missions argues that the City is in contempt of an injunction against the City's enforcement of certain provisions of the pre-amended version of that law and that the threatened enforcement of new provisions in the law would violate Gospel Missions' First Amendment rights.

The district court had jurisdiction under 28 U.S.C. §§ 2201-02, 1331 and 1343(a)(3)-(4). We have jurisdiction under 28 U.S.C. § 1291. We affirm in part and vacate and remand in part.

I.

The City regulates charitable solicitations. *See* Los Angeles, Cal., Muni Code (L.A.M.C.) §§ 44.00-44.15 (2002). The current version of the Los Angeles charitable solicitation law (Ordinance) requires all persons intending to solicit charitable contributions within the City to file certain

information with the Los Angeles Police Department. *Id.* § 44.04. The Police Department then investigates the information provided and determines whether to issue an Information Card to the applicant. *Id.* § 44.02. No one may solicit charitable contributions in the City without an Information Card. *Id.* § 44.09. The City also imposes an additional set of requirements on "professional fundraisers." *Id.* §§ 44.14. Professional fundraisers are those who solicit charitable contributions on behalf of others for gain. *Id.* § 44.00(f).

Gospel Missions is a non-profit religious corporation that provides ministry and shelter to homeless individuals, who in turn solicit funds and share some of the proceeds with Gospel Missions. In 1992, five of its properties were raided by the Los Angeles County Sheriff's Department because the Sheriff's Department believed Gospel Missions might be violating City and County charitable solicitation laws.

In response to the raid, Gospel Missions filed suit against the City and Los Angeles County (County), challenging the City and County charitable solicitation laws. The district court entered summary judgment in favor of Gospel Missions and enjoined the City and County from enforcing numerous provisions of their respective laws. *Gospel Missions of Am. v. Bennett,* 951 F. Supp. 1429 (C.D. Cal. 1997) (*GMA I*).

The City then amended the Ordinance (Amended Ordinance) in an attempt to comply with the *GMA I* injunction. Gospel Missions reluctantly complied with the Amended Ordinance's requirement that it obtain an Information Card before soliciting. Gospel Missions and the City agreed that the organization would not be considered a

professional fundraiser. Gospel Missions then instituted this action (*GMA II*) with the expectation that its members would not be allowed to solicit funds upon the expiration of its Information Card in July of 2000.

At a *GMA II* status conference, the district court gave Gospel Missions thirty days to file a summary judgment motion. After the City filed its response to the motion, the court sua sponte granted summary judgment in the City's favor. On appeal, Gospel Missions argues (1) that the district court's sua sponte summary judgment for the City denied it a full opportunity to develop its claims; (2) that numerous provisions applying to professional fundraisers in the Amended Ordinance are either in contempt of the *GMA I* injunction or are unconstitutional; (3) that the district court failed to address Gospel Missions' vagueness, overbreadth and equal protection arguments; and (4) that two of the non-professional fundraiser provisions in the Amended Ordinance--section 44.15 and section 44.02(b)(2)--are either in contempt of the *GMA I* injunction or are unconstitutional. We address each argument in turn.

II.

Even when there has been no cross-motion for summary judgment, a district court may enter summary judgment sua sponte against a moving party if the losing party has had a "full and fair opportunity to ventilate the issues involved in the matter." *Cool Fuel, Inc. v. Connett,* 685 F.2d 309, 312 (9th Cir. 1982). The salient issues upon which the district court granted summary judgment were presented in the original motion. A fair examination of the record discloses that Gospel Missions had "a full and fair opportunity to

ventilate the issues involved." *Id.* Therefore, the district court did not commit reversible error by acting sua sponte.

III.

The district court determined that Gospel Missions does not have standing to challenge the Amended Ordinance's professional fundraiser provisions. L.A.M.C. § 44.14. We review de novo the district court's standing decision. *Tyler v. Cuomo,* 236 F.3d 1124, 1131 (9th Cir. 2000). Gospel Missions argues that the district court is barred by claim and issue preclusion from determining that it does not have standing to challenge the professional fundraiser provisions because the district court in *GMA I* already determined that Gospel Missions had standing to challenge them.

A.

[1] In *Migra v. Warren City School District Board of Education,* 465 U.S. 75, 77 n.1, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1984), the Supreme Court described claim preclusion as "the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit" and issue preclusion as "the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided."

[2] Since standing is not a "claim" but an "issue," Gospel Missions' real argument addresses issue preclusion. For issue preclusion to bar relitigation, the issues must be "identical," *Fund for Animals, Inc. v. Lujan,* 962 F.2d 1391, 1399 (9th Cir. 1992), "actually litigated," and "necessarily decided." *United States v. Weems,* 49 F.3d 528, 532 (9th Cir. 1995).

We need not determine whether amending the ordinance makes the issues no longer identical because the second requirement has not been satisfied: Gospel Missions' standing to challenge the professional fundraiser provisions in *GMA I* was not "actually litigated." Gospel Missions did not challenge the professional fundraiser provisions in *GMA I* until it submitted its supplemental trial brief and, even then, neither party raised the standing question. Since the standing issue was neither framed in the pleadings nor contested by the parties in *GMA I*, issue preclusion does not bar the district court's standing decision. *Amadeo v. Principal Mut. Life Ins. Co.*, 290 F.3d 1152, 1159 (9th Cir. 2002) ("There was no actual litigation of any issue related to the breach of contract claim . . . . Thus, issue preclusion cannot attach . . . ."); *Weems,* 49 F.3d at 532 (applying issue preclusion because, in part, the issue was "vigorously litigated" in the district court and it heard argument from both sides); 18 James W. Moore et al., Moore's Federal Practice § 132.03[2][c](3d ed. 2001)("an issue that was not litigated or contested in the prior litigation is not subject to the doctrine of issue preclusion").

Not only is issue preclusion unavailable because the issue of standing was not "actually litigated," but issue preclusion is unavailable for a second, more fundamental reason. *GMA I* stated there was standing, and Gospel Missions therefore seeks to bar the City from arguing a lack of standing. To accept Gospel Missions' argument would raise the possibility that we lack jurisdiction though issue preclusion forces us to pretend to exercise it. Yet we cannot blindly assume we have jurisdiction. A court must always decide for *itself* its own jurisdiction. *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 94, 140 L. Ed. 2d 210, 118 S. Ct. 1003(1998). Just as we would not give precedential effect to a "drive-by"

jurisdictional determination by our or a higher court, 5263 U.S. at 91, we would not give preclusive effect to *GMA I's* unlitigated jurisdictional statement.

B.

[3] We thus consider whether Gospel Missions has standing to challenge the professional fundraiser provisions of the Amended Ordinance. To have standing, Gospel Missions must show that it has suffered an "injury in fact," that its injury is "fairly traceable" to the City's actions, and that its injury will likely be "redressed" by this action. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992).

[4] Gospel Missions first argues that it has standing to challenge the professional fundraiser provisions because its members were deprived of the ability to solicit funds for approximately two months. While this may constitute an injury, it is not traceable to the professional fundraiser provisions of the Amended Ordinance. Gospel Missions members were threatened with arrest and therefore unable to solicit because they did not have an Information Card as required by the Amended Ordinance. Because the Information Card requirement is part of the general provisions of the Amended Ordinance, rather than its professional fundraiser provisions, the injury Gospel Missions alleges is not traceable to the professional fundraiser provisions. Gospel Missions cannot base its standing to challenge those provisions on its members' inability to solicit funds for the two month period.

[5] Citing *Gooding v. Wilson,* 405 U.S. 518, 31 L. Ed. 2d 408, 92 S. Ct. 1103(1972), Gospel Missions also argues that

it has standing to challenge the Amended Ordinance's professional fundraiser provisions as being vague and overbroad. Just citing *Gooding* is not enough; Gospel Missions must also meet the requirements of "overbreadth standing": injury-in-fact and the ability to frame the issues in the case satisfactorily. *Clark v. City of Lakewood,* 259 F.3d 996, 1010-11 (9th Cir. 2001); *4805 Convoy, Inc. v. City of San Diego,* 183 F.3d 1108, 1111-12 (9th Cir. 1999). Gospel Missions lacks overbreadth standing to challenge the professional fundraiser provisions because these provisions do not apply to Gospel Missions, and it has not indicated its intent to become a professional fundraiser. *Convoy,* 183 F.3d at 1112-13 (holding the adult business lacks standing to challenge the license provisions because it "cannot assert that it will ever again be subject to the licensing provisions, because it has never indicated that it intends to pursue another license"). Gospel Missions does not allege a credible threat that the City will later consider Gospel Missions a professional fundraiser. "[P]ersons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs." *Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289, 298, 60 L. Ed. 2d 895, 99 S. Ct. 2301 (1979), *quoting Younger v. Harris,* 401 U.S. 37, 42, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971).

[6] Finally, Gospel Missions argues that it has standing to challenge the professional fundraising provisions of the Amended Ordinance because those provisions violate Gospel Missions' *First Amendment* right to hear speech or, in this case, to be solicited. This is not sufficient to establish Gospel Missions' standing to challenge the Amended Ordinance's professional fundraiser provisions because it alleges only a mere "possibility of future injury." 18 James W. Moore et

al., Moore's Federal Practice § 101.40[7][b](3d ed. 2001); *see Whitmore v. Arkansas,* 495 U.S. 149, 158, 109 L. Ed. 2d 135, 110 S. Ct. 1717(1990). Because Gospel Missions has not been injured by the City's professional fundraiser provisions, it does not have standing to challenge them.

We now turn to whether the City is in contempt of the *GMA I* injunction as it applies to professional fundraisers. The district court in *GMA I* enjoined the City from "*enforcing* those provisions of the [Ordinance] that are inconsistent with the *First Amendment*, as set forth in this Order." *GMA I,* 951 F. Supp. at 1455 (emphasis added). Since the City has not and does not intend to enforce the professional fundraiser provisions against Gospel Missions, it has not run afoul of the injunction. Therefore, there is no reason for us to decide in this case whether the amended professional fundraiser provisions would violate the injunction if enforced.

IV.

[7] The district court erred when it failed to address some of Gospel Missions' vagueness, overbreadth, and equal protection arguments. Insofar as Gospel Missions lodges these attacks against the professional fundraiser provisions, it lacks standing. Yet Gospel Missions also attacks sections 44.00(b) and (g), the definition of "charitable" and "soliciting," which it contends are unconstitutionally vague and overbroad as to who must obtain an Information Card. Gospel Missions also argues that these provisions violate equal protection.

[8] The City argues that Gospel Missions is claim precluded from lodging these attacks because it could have, but failed to, raise these claims in *GMA I.* Claim preclusion

bars from a second action a claim that could have been, but was not, brought in the first action. It applies where (1) the same parties, or their privies, were involved in the prior litigation, (2) the prior litigation involved the same claim as the later suit, and (3) the prior litigation was terminated by a final judgment on the merits. *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 323-24, 28 L. Ed. 2d 788, 91 S. Ct. 1434 (1971). In determining whether the prior litigation involved the same claim, we consider four questions: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." *Fund for Animals,* 962 F.2d at 1398. The fourth question is the most important. Id.

[9] Claim preclusion does not bar Gospel Missions' constitutional attacks because *GMA I* involved different rights and a different transactional nucleus of facts. Only after *GMA I* did the City assert that Gospel Missions was not a professional fundraiser but must nonetheless obtain an Information Card. It is this conduct that implicates the alleged vagueness and overbreadth of the definition, and it is this conduct that allegedly violates equal protection.

[10] Had the City required a license, Gospel Missions would have "overbreadth standing" to challenge these provisions. Gospel Missions would suffer injury-in-fact because it is required to obtain a "license" to solicit. *Clark, 259 F.3d* at 1011 (adult cabaret showed sufficient injury-in-fact to challenge license provisions because absent the license,

the business would be unable to engage in expressive activity). Gospel Missions could also satisfactorily frame the issues in the case. *See id.* (holding that the adult business can satisfactorily frame the issues on identical facts). We remand to the district court to determine whether the "Information Card" is the functional equivalent of a "license" and, if so, to consider Gospel Missions' vagueness, overbreadth, and equal protection challenge to sections 44.00(b) and (g).

V.

Gospel Missions further argues that section 44.15 is either unconstitutional or in contempt of the *GMA I* injunction. Under section 44.15, the Police Department may endorse charitable organizations that meet certain requirements. Gospel Missions is incorrect that section 44.15 is in contempt of the *GMA I* injunction. *GMA I* did not address section 44.15.

[11] Gospel Missions is claim-precluded from challenging the constitutionality of section 44.15 because it could have but did not raise this claim in *GMA I*. Unlike the challenge to the definitions of "charitable" and "solicitation," its current challenge to section 44.15 involves the same claim as the previous suit.

[12] Gospel Missions asks us to announce an exception to res judicata when the claim involves a statute's unconstitutionality. There is no such exception, nor should there be one. The Amended Ordinance is not immunized from constitutional scrutiny; claim preclusion does not bar this claim from being raised by a non-party to *GMA I*. As far as the justice or the public policy of denying Gospel Missions to

lodge its claim, the Supreme Court has emphasized, "There is simply no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of res judicata." *Federated Dep't Stores, Inc. v. Moitie,* 452 U.S. 394, 401, 69 L. Ed. 2d 103, 101 S. Ct. 2424(1981)(internal quotation marks and citation omitted); *see Ferris v. Cuevas,* 118 F.3d 122 (2d Cir. 1997) (applying New York law to hold claim preclusion bars a *First Amendment* claim).

Gospel Missions also argues that claim preclusion does not apply because twenty of the twenty-six individual plaintiffs in this case were not part of *GMA I.* Yet claim preclusion does not require these individuals to be parties; it is enough that they are in privity with a party. *Richards v. Jefferson County,* 517 U.S. 793, 798, 135 L. Ed. 2d 76, 116 S. Ct. 1761 (1996).

Gospel Missions has admitted to this court and to the district court that it and all the individual members in this suit are either parties to or in privity with the parties to *GMA I.* First, Gospel Missions and the individual plaintiffs argued before us and the district court that the City is claim precluded from asserting several arguments. Only parties and their privies may obtain the benefits of res judicata. RESTATEMENT (SECOND) OF JUDGMENTS § 34(3)(1982); *Nagle v. Lee,* 807 F.2d 435, 440 (5th Cir. 1987). By arguing it was entitled to benefit from res judicata, it admitted that it was a party to *GMA I* or in privity with the parties to *GMA I.* Second, in its appellate brief, Gospel Missions and the individual plaintiffs remarked that the individual plaintiffs who are members of Gospel Missions are in privity with the original plaintiffs. In its complaint, it alleged that all the individual plaintiffs are members of the

organization, thus admitting these twenty individual plaintiffs are in privity.

We have discretion to consider a statement made in briefs to be a judicial admission, *Kohler v. Inter-Tel Techs.*, 244 F.3d 1167, 1180 n.9 (9th Cir. 2001) (appellate briefs); *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 227 (9th Cir. 1988) (trial briefs), binding on both this court and the trial court. *United States v. Bentson,* 947 F.2d 1353, 1356 (9th Cir. 1991). Because Gospel Missions has never raised the issue of privity, the City relied on the statement as an admission, and Gospel Missions tried to benefit from the admission, we exercise our discretion and consider its statements to be a judicial admission of privity.

VI.

We now address whether section 44.02(b)(2) of the Amended Ordinance is contrary to the *GMA I* injunction or unconstitutional. Section 44.09 in the Ordinance and Amended Ordinance prohibits the solicitation of charitable contributions without an Information Card. Under the Ordinance, section 44.02(e) required the Information Card to indicate:

> (1) That same is issued as information for the public and is not an endorsement; or
>
> (2) That same is an endorsement if (1) hereinabove is omitted and the Department endorses pursuant to Section 44.15 of this Article;

> (3) The pertinent facts of the solicitation, including the commencement and termination dates;
>
> (4) Any additional information which in the opinion of the Department will be of assistance to the public in determining the nature and worthiness of the solicitation.

In *GMA I*, Gospel Missions challenged the constitutionality of section 44.02(e)(4). 951 F. Supp. at 1445-46. *GMA I* determined that section 44.02(e)(4) was unconstitutional because it "plainly permits the Department to require disclosure of its own views concerning the 'nature and worthiness' of the solicitation, even if it is not explicitly stated as such." *Id.* at 1445. *GMA I* enjoined the enforcement of section 44.02(e)(4). *Id.* at 1455. Gospel Missions did not challenge sections 44.02(e)(1)-(3), and *GMA I* did not address these provisions.

In response to the injunction, the City deleted section 44.02(e)(4) and moved section 44.02(e)(1)-(3) to section 44.02(b)(2) in the Amended Ordinance. Amended Ordinance section 44.02(b)(2) is not contemptuous of the *GMA I* injunction because section 44.02(e)(4), the subject of the *GMA I* injunction, was deleted from the Amended Ordinance.

[13] Gospel Missions challenges 44.02(b)(2), arguing that its requirement of a statement regarding endorsement and "pertinent facts" of the solicitation are unconstitutional. Gospel Missions is claim precluded from doing so. It could have, but failed to, raise these arguments regarding section 44.02(e)(1)-(3) in *GMA I*. Though the City amended the ordinance by moving sections 44.02(e)(1)-(3) to section

44.02(b)(2), the prior litigation involves the same claim, the second requirement for claim preclusion. The only thing that changes is whether the challenged provision is called "subsection (e)" or "subsection (b)." The same evidence, the same right, and the same transactional nucleus of facts are involved. *See Fund for Animals,* 962 F.2d at 1398(listing the issues for determining whether the second litigation presents the same claim).

It is also no answer to suggest that the City only recently "seriously enforced" these provisions. Even if the City did not enforce these provisions before, because of the relaxed standing doctrines available to free speech claims, Gospel Missions could have attacked section 44.02(e)(1)-(3) before the City enforced these provisions. There is no new claim; instead there is a new fact supporting an old claim. "An action that merely alleges new facts in support of a claim that has gone to judgment in a previous litigation will be subject to claim preclusion." 18 James W. Moore et al., Moore's Federal Practice § 131.21[1](3d ed. 2001); *Costantini v. Trans World Airlines,* 681 F.2d 1199, 1202 (9th Cir. 1982)(claim preclusion applies though the plaintiff uncovered an additional falsehood in its unfair competition claim; the new fact did not arise out of a different transactional nucleus of facts and therefore did not create a new claim).

VII.

Gospel Missions also argues that the City's enforcement efforts constitute an illegal custom or policy under *Monell v. Department of Social Services,* 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). The district court should address

this *Monell* argument if it determines that sections 44.00(b) or 44.00(g) are unconstitutional.

AFFIRMED IN PART, VACATED IN PART AND REMANDED. Each party shall bear its own costs in this appeal.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 00-55993
CT/AG#: CV- 99-07038-SVW

[Filed May 5, 2003]

GOSPEL MISSIONS OF AMERICA, a religious corporation; ERICH WAGNER, II; RAY AUSTIN; RON BARBER; P. J. BOURBONNAIS; JAY BOWMAN, JR.; WILLIAM CAMPBELL; WARREN DALY; EDWARD EBELING; ALLAN GATHUNGU; DOUGLAS GORDEN; JEREMY HARSH; KELVIN JACKSON; JAMES KAHL; JOHN D. LOVE; GEORGE LOWNES; MICHAEL MEFFORD; JOHN PROCTOR; JAMES C. ROBERTS; JAMES RODGERS; DAVID ROOT; DONALD STACH; JAMES VANDERPOEL; BRENDA WAGNER; PAUL WINN; THOMAS WISE; RUTH WASHINGTON; RAY ZEDD

Plaintiffs - Appellants

v.

CITY OF LOS ANGELES; LOS ANGELES WORK AIRPORTS; HENRY ACOSTA, as an individual and in his official capacity as Officer for the Airport

Police Bureau; SHIRLEY FLUCUS, as an individual and in her official capacity; RONALD E. MARBREY, as an individual and in his official capacity)

Defendants - Appellees)

JUDGMENT

APPEAL FROM the United States District Court for the Central District of California, Los Angeles.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED IN PART, VACATED IN PART AND REMANDED. Each party shall bear its own costs in this appeal.

Filed and entered MAY 5, 2003

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 00-55993
D.C. No. CV- 99-07038-SVW
Central District of California,
Los Angeles

[Filed December 20, 2002]

GOSPEL MISSIONS OF AMERICA, a religious corporation, et al.,	)
Plaintiffs - Appellants,	)
v.	)
CITY OF LOS ANGELES, et al.,	)
Defendants - Appellees.	)

ORDER

Before: GOODWIN, WALLACE and THOMAS, Circuit Judges

On or before 28 days from the date of this order, the parties shall file simultaneous briefs of not morethan 30 pages directed to the following six questions:

(1) The opinion states that Gospel Missions has standing (by virtue of issue preclusion) to challenge the Amended Ordinance that was the subject of the GMA I injunction. Did the panel err by failing to remand to the district court to consider the constitutional challenges of those provisions inthe Amended Ordinance? Does issue preclusion apply so that an adjudication of standing to challenge the Ordinance precludes a later adjudication of standing to challenge the *Amended* Ordinance? In other words, is there an identity of issues? Is Gospel Missions' standing as to the Ordinance the same issue as Gospel Missions' standing as to the Amended Ordinance?) Of course, Gospel Missions is not foreclosed from enforcing the prior judgment (GMA I) directly to the extent it can. Thus, why does Gospel Missions believe it is entitled to a remand in GMA II?

(2) The opinion concludes that Gospel Missions lacks standing to challenge the endorsement provisions because Gospel Missions never sought endorsement. Does the injury of being deprived of the ability to solicit for two months give Gospel Missions standing to challenge the enforcement provisions? Is this injury traceable to the enforcement provisions?

(3) Because Gospel Missions was attacking the overbreadth of the entire Amended Ordinance, does Gooding confer upon it standing to challenge overbreadth? Is Gospel Missions correct that the opinion made a factual error when it stated that its vagueness, overbreadth, and equal protection arguments focused on the professional fundraiser provisions, while Gospel Missions argues that it was attacking the entire statute on these grounds?

(4) The City of Los Angeles moves for reconsideration and clarification, asserting the opinion is ambiguous when it held that "claim preclusion does not bar this claim because the complained-of-conduct (the City's attempt to enforce the Amended Ordinance against Gospel Missions) occurred after GMA I." Is the relevant conduct the City's attempt to *enforce* the Amended Ordinance or the City's use of the *Amended* Ordinance? In other words, does claim preclusion not apply to Gospel Missions' attack on Section 44.02(b)(2) because the City did not seriously enforce the provisions before GMA I, or because the City re-numbered the provisions after GMA I?

(5) To what extent is the ordinance's amended version different from the original version? What specific information does the original ordinance require that the amended version does not?

(6) The panel remanded the case to district court to determine whether the amended ordinance's disclosure requirements survive "exacting First Amendment scrutiny." To what extent does the district court's holding in GMA I implicate this determination? How expansive was the district court's holding of unconstitutionality? Does law of the case apply in this instance?

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 00-55993
D.C. No. CV- 99-07038-SVW
Central District of California,
Los Angeles

[Filed September 5, 2002]

GOSPEL MISSIONS OF AMERICA, a religious corporation, et al., Plaintiffs - Appellants,	)
v.	)
CITY OF LOS ANGELES, et al., Defendants - Appellees.	)

ORDER

Before: GOODWIN, WALLACE and THOMAS, Circuit Judges.

Defendants/Appellees, shall file a response to Plaintiffs/Appellants' petition for rehearing and rehearing en banc. Fifty (50) copies of said response shall be filed within 21 days of the filed date of this order.

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00-55993

[Filed August 8, 2002]

GOSPEL MISSIONS OF AMERICA, a religious corporation; ERICH WAGNER, II; RAY AUSTIN; RON BARBER; P.J. BOURBONNAIS; JAY BOWMAN, JR.; WILLIAM CAMPBELL; WARREN DALY; EDWARD EBELING; ALLAN GATHUNGU; DOUGLAS GORDEN; JEREMY HARSH; KELVIN JACKSON; JAMES KAHL; JOHN D. LOVE; GEORGE LOWNES; MICHAEL MEDFORD; JOHN PROCTOR; JAMES C. ROBERTS; JAMES RODGERS; DAVID ROOT; DONALD STACH; JAMES VANDERPOEL; BRENDA WAGNER; PAUL WINN; THOMAS WISE; RUTH WASHINGTON; RAY ZEDD,

Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES; LOS ANGELES WORK AIRPORTS; HENRY ACOSTA, as an individual and in his official capacity as Officer for the Airport Police Bureau; SHIRLEY FLUCUS, as an individual and in her official capacity; RONALD E. MARBREY,

as an individual and in his official capacity,)
Defendants-Appellees.)
)

Appeal from the United States District Court
for the Central District of California
D.C. No. CV-99-07038-SVW
Steven V. Wilson, Chief Judge, Presiding

JUDGES: Before Alfred T. Goodwin, J. Clifford Wallace and Sidney R. Thomas, Circuit Judges. Opinion by Judge Wallace.

OPINION

WALLACE, Senior Circuit Judge:

Gospel Missions of America (Gospel Missions) appeals from a summary judgment in favor of the City of Los Angeles (City) in an action stemming from the City's attempt to enforce against Gospel Missions an amended version of its charitable solicitations law. Gospel Missions argues that the City is in contempt of an injunction against the City's enforcement of certain provisions of the pre-amended version of that law and that the threatened enforcement of new provisions in the law would violate Gospel Missions' First Amendment rights.

The district court had jurisdiction under 28 U.S.C. § § 2201-02, 1331 and 1343(a)(3)-(4). We have jurisdiction under 28 U.S.C. § 1291. We affirm in part and vacate and remand in part.

I

The City regulates charitable solicitations. *See* L.A., Cal., Municipal Code (L.A.M.C.) § § 44.00-44.15. The current version of the Los Angeles charitable solicitation law (Ordinance) requires all persons intending to solicit charitable contributions within the city to file an application with the Los Angeles Police Department. *Id.* § 44.04. The Police Department then investigates the information provided and determines whether to issue an Information Card to the applicant. *Id.* § 44.02. No one may solicit charitable contributions in the City without an Information Card. *Id.* § 44.09. The City also imposes an additional set of requirements on "Professional Fund-raisers." *Id.* § § 44.14. Professional fund-raisers are those who solicit charitable contributions on behalf of others for gain. *Id.* § 44.00(f).

Gospel Missions is a non-profit religious corporation that provides ministry and shelter to homeless individuals, who in turn solicit funds and share some of the proceeds with Gospel Missions. In 1992, five of its properties were raided by the Los Angeles County Sheriff's Department because the Sheriff's Department believed Gospel Missions might be violating city and county charitable solicitation laws.

In response to the raid, Gospel Missions filed suit against the City and Los Angeles County (County) and included in its allegations constitutional challenges to the City and County charitable solicitation laws. The district court entered summary judgment in favor of Gospel Missions and enjoined the City and County from enforcing numerous provisions of their respective laws. *See Gospel Missions of America v. Bennett*, 951 F. Supp. 1429 (C.D. Cal. 1997) (*GMA I*).

The City then amended the Ordinance (Amended Ordinance) in an attempt to comply with the *GMA I* injunction. Gospel Missions reluctantly complied with the Amended Ordinance's requirement that it obtain an Information Card before soliciting. It then instituted this action (*GMA II*) with the expectation that its members would not be allowed to solicit funds upon the expiration of its Information Card in July of 2000.

At a *GMA II* status conference, the district court gave Gospel Missions thirty days to file a summary judgment motion. After the City filed its response to the motion, the court sua sponte granted summary judgment in the City's favor. On appeal, Gospel Missions argues (1) that the district court's sua sponte summary judgment for the City denied it a full opportunity to develop its claims; (2) that numerous provisions applying to professional fundraisers in the Amended Ordinance are either in contempt of the *GMA I* injunction or unconstitutional; (3) that the district court failed to address Gospel Missions' vagueness, overbreadth and equal protection arguments; and (4) that two of the non-professional fund-raiser provisions in the Amended Ordinance - section 44.15(b) and section 44.02(b)(2) - are either in contempt of the *GMA I* injunction or unconstitutional. We address each argument in turn.

II

Even when there has been no cross-motion for summary judgment, a district court may enter summary judgment sua sponte against a moving party if the losing party has had a "full and fair opportunity to ventilate the issues involved." *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 312 (9th Cir.

1982). The salient issues upon which the district court granted summary judgment were presented in the original motion. A fair examination of the record discloses that Gospel Missions had "a full and fair opportunity to ventilate the issues involved." Therefore, the district court did not commit reversible error by acting sua sponte.

III

The district court determined that Gospel Missions does not have standing to challenge the Amended Ordinance's professional fundraiser provisions. We review de novo the district court's standing decision. *Tyler v. Cuomo*, 236 F.3d 1124, 1131 (9th Cir. 2000). Gospel Missions argues that the district court is barred by claim and issue preclusion from determining that it does not have standing to challenge the professional fundraiser provisions because the district court in *GMA I* already determined that Gospel Missions had standing to challenge them.

A

In *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 77 n. 1, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1984), the Supreme Court described claim preclusion as "the effect of a judgment in foreclosing litigation of a matter that has never been litigated, because of a determination that it should have been advanced in an earlier suit" and issue preclusion as "the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided."

Our decisions on the subject of claim and issue preclusion have not been a model of clarity. Compare *Frank v. United*

Airlines, Inc., 216 F.3d 845, 850 n. 4 (9th Cir. 2000) (claim preclusion refers to claims that were raised or should have been raised in earlier litigation) with *Ross v. Alaska*, 189 F.3d 1107, 1110 n. 2 (9th Cir. 1999) (claim preclusion refers only to claims that should have been raised in earlier litigation but were not). Since *Migra* is controlling, we will follow its formulation.

Since Gospel Missions argues that the standing question has already been decided, its argument addresses issue preclusion. Courts have characterized the issue preclusion doctrine in many different ways. *See* 18 Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice & Procedure § § 4416, 4419-21 (1981) (Wright & Miller). However, among the issue preclusion requirements are two that are particularly relevant to this case: the issue must have been "both 'actually litigated' and 'necessarily decided' in the former decision." *United States v. Weems*, 49 F.3d 528, 532 (9th Cir. 1995).

Gospel Missions' standing to challenge the professional fundraiser provisions in *GMA I* was not "actually litigated" in its ordinary sense. Gospel Missions did not challenge the professional fundraiser provisions in *GMA I* until it submitted its supplemental trial brief and, even then, neither party raised the standing question. Since the standing issue was not framed in the pleadings or contested by the parties in *GMA I*, issue preclusion normally would not bar the district court's standing decision. *See* 18 James Wm. Moore et al., Moore's Federal Practice § § 132.03[2][b]-[c] (3d ed. 2001) (Moore's), Wright & Miller § 4419. However, this case is different because the district court necessarily had to resolve the issue to form the basis of its decision. The district court must

necessarily have decided whether Gospel Missions had standing to challenge the ordinance's professional fundraiser provisions, because if Gospel Missions had not had standing, then the district court would have lacked jurisdiction to issue the injunction prohibiting enforcement of the professional fundraiser provisions it found unconstitutional. This case is not unlike *Weems*, in which we struggled with a similar issue. There, a prior forfeiture proceeding may have resulted in the litigation of the issue of whether there was a lack of knowledge of a marijuana growing operation. Two forfeiture statutes were involved and only one would have resulted in preclusion. Because the district court reached both statutory sections, we held the issue of knowledge precluded, although the actual section relied on for forfeiture did not have a knowledge requirement. *Weems*, 49 F.3d at 532. We believe *Weems* controls. Thus, we conclude that we are bound by the district court's conclusion or, more properly, its unidentified position, that Gospel Missions had standing to challenge the professional fundraiser provisions in *GMA I*. But this standing is limited, as far as issue preclusion is concerned, to the Ordinance. Thus, the issue of standing is precluded only to the extent that the professional fundraiser provisions in the Amended Ordinance are the subject of the *GMA I* injunction. Issue preclusion does not prevent us from determining whether Gospel Missions has standing to challenge those portions of the professional fundraiser provisions in the Amended Ordinance that do not run afoul of the *GMA I* injunction.

B

We thus consider whether Gospel Missions has standing to challenge the professional fundraiser provisions of the

Amended Ordinance to the extent those provisions are not contrary to the *GMA I* injunction. To have standing, Gospel Missions must show that it has suffered an "injury-in-fact," that its injury is "traceable" to the City's actions, and that its injury will likely be "redressed" by this action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992).

Gospel Missions first argues that it has standing to challenge the professional fundraiser provisions because its members were deprived of the ability to solicit funds for approximately two months. While this may constitute an injury, it is not traceable to the professional fundraiser provisions of the Amended Ordinance. Gospel Missions members were threatened with arrest and therefore unable to solicit because they did not have an Information Card as required by the Amended Ordinance. Because the Information Card requirement is part of the general provisions of the Amended Ordinance rather than its professional fundraiser provisions, the injury Gospel Missions alleges is not traceable to the professional fundraiser provisions. Gospel Missions cannot base its standing to challenge those provisions on its members' inability to solicit funds for the two month period.

Citing *Gooding v. Wilson*, 405 U.S. 518, 31 L. Ed. 2d 408, 92 S. Ct. 1103 (1972), Gospel Missions also argues that it has standing to challenge the Amended Ordinance's professional fundraiser provisions because its professional fundraiser definition is vague. However, the *Gooding* case addresses only the First Amendment overbreadth standing doctrine and thus does not help Gospel Missions.

Finally, Gospel Missions argues that it has standing to challenge the professional fund-raising provisions of the Amended Ordinance because those provisions violate Gospel Missions' First Amendment right to hear speech or, in this case, to be solicited. This is not sufficient to establish Gospel Missions' standing to challenge the Amended Ordinance's professional fundraiser provisions because it alleges only a mere "possibility of future injury." Moore's § 101.40[7][b]; *see Whitmore v. Arkansas*, 495 U.S. 149, 158, 109 L. Ed. 2d 135, 110 S. Ct. 1717 (1990). Because Gospel Missions has not been injured by the City's professional fundraiser provisions that were not the subject of the *GMA I* injunction, it does not have standing to challenge them.

We now turn to whether the City is in contempt of the *GMA I* injunction as it applies to professional fundraisers. The district court in *GMA I* enjoined the City from "*enforcing* those provisions of the [Ordinance] that are inconsistent with the First Amendment, as set forth in this Order." *GMA I*, 951 F. Supp. at 1455. Since the City has not sought and does not plan to seek to enforce the professional fundraiser provisions against Gospel Missions, it has not run afoul of the injunction. Therefore, there is no reason for us to decide in this case whether the amended professional fundraiser provisions would violate the injunction if enforced.

IV

The district court did not err when it failed to address Gospel Missions' vagueness, overbreadth, and equal protection arguments. These arguments, raised by Gospel Missions in its summary judgment motion, focused on the professional fundraiser provisions. Because Gospel Missions

does not have standing to challenge these provisions, the district court did not err when it disregarded them.

V

Gospel Missions further argues that section 44.15(b) is either unconstitutional or in contempt of the *GMA I* injunction. Under section 44.15, the Police Department may endorse charitable organizations that meet certain requirements. L.A.M.C. § 44.15. Gospel Missions never sought endorsement. It therefore does not have standing to challenge section 44.15(b) for the same reason that it does not have standing to challenge the professional fundraiser provisions.

VI

We now address whether section 44.02(b)(2) in the Amended Ordinance is contrary to the *GMA I* injunction. Section 44.09 in the Ordinance and Amended Ordinance prohibits the solicitation of charitable contributions without an Information Card. Section 44.02(e) in the Ordinance identified the information to be placed on the Information Card. In *GMA I*, Gospel Missions challenged the constitutionality of section 44.02(e)(4) which permitted the City to place on the information card "any additional information" it deemed appropriate. *See GMA I*, 951 F. Supp. at 1445-1446. The district court, in *GMA I*, determined that section 44.02(e)(4) was unconstitutional and enjoined its enforcement. *Id.* In response to the injunction, the City deleted section 44.02(e)(4) and moved the remainder of section 44.02(e) to section 44.02(b)(2) in the Amended Ordinance. Amended Ordinance section 44.02(b)(2) is not

contemptuous of the *GMA I* injunction because section 44.02(e)(4), the subject of the *GMA I* injunction, was deleted from the Amended Ordinance.

However, the surviving endorsement requirement in section 44.02(b)(2) raises a constitutional issue. Whether we can address it depends on whether claim preclusion bars Gospel Missions from raising this argument here because it could have but did not raise it in *GMA I*. We conclude that claim preclusion does not bar this claim because the complained-of conduct (the City's attempt to enforce the Amended Ordinance against Gospel Missions) occurred after GMA I. *See Harkins Amusement Enters., Inc. v. Harry Nace Co.*, 890 F.2d 181, 183 (9th Cir. 1989); *see also* Wright & Miller § 4409.

We must, therefore, address the merits of Gospel Missions' argument. The district court relied on *Village of Schaumberg v. Citizens for a Better Environment*, 444 U.S. 620, 63 L. Ed. 2d 73, 100 S. Ct. 826 (1980), when it concluded that the endorsement requirement was constitutional. *Schaumberg*, while helpful, is not controlling because it addressed the constitutionality of a municipal permit requirement, *see* 444 U.S. at 623-24, not the constitutionality of a requirement for solicitors to exhibit or display certain information before soliciting. The controlling case for the kind of compelled speech requirement at issue here is *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 101 L. Ed. 2d 669, 108 S. Ct. 2667 (1988). We observe that the Supreme Court recently invalidated a local ordinance that required door-to-door "canvassers" to both obtain a permit before canvassing and to display that permit when canvassing. *Watchtower Bible and*

Tract Soc'y of New York, Inc. v. Village of Stratton, 153 L. Ed. 2d 205, 122 S. Ct. 2080 (2002). The Supreme Court, however, gave no indication in *Stratton* that it meant to depart from its ruling in *Riley*. Since the ordinance in *Stratton* regulated canvassing in general and not just charitable solicitations, we conclude that *Riley* still controls our decision.

In *Riley*, the Supreme Court addressed the constitutionality of a provision in North Carolina's Charitable Solicitations Act that required professional fundraisers to disclose to potential donors the percentage of funds retained in earlier solicitations. *See id.* The Court stated that the forced disclosure was a content-based regulation that deserved "exacting First Amendment scrutiny," 487 U.S. at 798, and proceeded to determine whether the state had shown a "compelling [need]" to force the disclosure and whether the regulation was "precisely tailored." 487 U.S. at 800. The Court struck down the forced disclosure requirement because the state's interest in the regulation was not sufficiently compelling and because the state could have used more benign alternatives to reach its objectives. 487 U.S. at 798-803.

There are significant differences between the disclosure requirement in *Riley* and section 44.02(b)(2). Section 44.02(b)(2), for example, requires all solicitors of charitable donations (rather than just professional fundraisers) to present their Information Card to prospective donors. *See* L.A.M.C. § 44.02(b)(2). Moreover, 44.02(b)(2) requires that the Information Card state that the solicitor is either endorsed or not endorsed; it does not require the kind of detailed disclosure that was at issue in *Riley*. *See id.* § 44.02(b)(2); *Riley*, 487 U.S. at 784. On the other hand, it accomplishes a

similar, if not a more intrusive end than the statute at issue in *Riley*, because the presence or absence of endorsement in this case indicates whether the solicitor has complied with an extensive list of requirements that are set out in section 44.15(a), one of which is a requirement that the organization not pay out more than 20% of the funds collected for solicitation expenses. L.A.M.C. § 44.15(a)(7).

Differences aside, the Information Card endorsement requirement is a form of compelled speech that should have been subject to the same exacting scrutiny that was applied in *Riley*. This does not mean that all compelled disclosure requirements are doomed. The Court stated in *Riley* that the City may require a fundraiser to disclose name, address and professional status information. *Id.* at 799 n. 11. The endorsement requirement in 44.02(b)(2), though, is different from the kind of limited factual disclosure that was approved by the Court in *Riley*.

Because the record before us prevents us from making the determination required by *Riley*, and because the district court should have the first opportunity to rule on this issue, we vacate the district court's endorsement requirements holding and remand to the district court for it to make the determination, consistent with the Supreme Court's decision in *Riley*.

Gospel Missions also argues that the City's enforcement efforts constitute an illegal custom or policy under *Monell v. Department of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). The district court should address this *Monell* argument if it determines that section 44.02(b)(2) is unconstitutional.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 99-7038 SWV (AIJx)

[Filed May 11, 2000]

GOSPEL MISSIONS OF AMERICA, et al.,
Plaintiffs,
v.

CITY OF LOS ANGELES, et al.,
Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS

I. Introduction.

This action presents a challenge to the Los Angeles Municipal Code §§ 44.00 - 44.15, which regulate solicitation of charitable contributions. Plaintiffs move for summary judgment. They argue that numerous provisions of the ordinance are unconstitutional, and are contemptuous of a previous decision overturning the statute on First Amendment grounds. For the reasons stated below, the Court hereby

denies Plaintiff's motion for summary judgment and grants summary judgment in favor of Defendants..

II. Background

Plaintiff Gospel Missions of America ("GMA") is a nonprofit Christian religious corporation that serves the needs of the homeless by providing food, shelter, clothing, and money directly to homeless individuals who join the organization. The members live in houses owned by the organization. They comprise a mission community that eats and prays together. To support themselves, the members solicit donations at various locations throughout Los Angeles.

GMA filed an action in 1993 challenging the constitutionality of the City's and County's charitable solicitation ordinances under the First Amendment. The ordinances required that anyone soliciting charitable contributions obtain an "Information Card." "Professional fundraisers and "solicitors," as the terms were defined by the ordinance, were required to obtain a license to solicit contributions.

In 1997, Judge Kim Wardlaw found in favor of GMA and enjoined enforcement of the invalid provisions of both the city and county ordinances. Gospel Missions of America v. Bennett, 951 F. Supp. 1429 (C.D. Cal. 1997). The City enacted a new ordinance in 1997 in an attempt to comply with that decision, while reserving its rights to challenge the ordinance, Plaintiff's counsel negotiated with the City and obtained an Information Card for GMA in July 1999. The card expires in July 2000.

Plaintiffs initiated this suit in anticipation that they will be required in July of this year (when its Information Card expires) to stop soliciting funds unless it complies with the ordinance. The complaint alleges that the City retained numerous provisions that Gospel Missions specifically found unconstitutional, and that other provisions not addressed in that opinion are unconstitutionally vague or overbroad under the First Amendment.

III. Discussion

Under the Los Angeles Municipal Code, no person may solicit charitable contributions without filing a "Notice of Intention" and obtaining an "Information Card." LAMC §§ 44.04 and 44.09. The Notice of Intention must be filed with the City of Los Angeles Police Department ("the Department") . Section 44.04 requires that the notice contain, among other things, the name of the person desiring to solicit funds, the purpose of the solicitation, the estimated expenses of the solicitation, and the names of any person engaging in solicitation who has been convicted of a felony or misdemeanor involving moral turpitude within the past 7 years. The Department must issue an Information Card within 15 days if the Notice of Intention complies with Section 44.04. LAMC § 44.02(b)(1). If the notice does not comply with Section 44.04, the Department must inform the applicant in writing of the specific information needed to meet those requirements. Id.

The Department must indicate certain facts on the Information Card. The card must contain the "pertinent facts of the solicitation, including the commencement and termination dates." LAMC § 44.02(b)(2)(iii). In addition, the

card must either state that it is issued as information only and not an endorsement, or that the card is an endorsement pursuant to 19tMC § 44.15. LAMC § 44.02(b) (2) (i), (ii).

Section 44.15 provides that the Department has the power to endorse charitable organizations that submit to investigation and meet numerous requirements. These requirements include that the organization provide a direct service program to the community; that the members of the board of directors or trustees are not compensated for their services; that no organization monies are loaned to an officer, director, or trustee; and that the organization has not paid out more than 20 percent of any amount collected for the expenses of solicitation. LAMC §§ 44.15(a)(1)-(9). The Department may refuse to endorse (or revoke the endorsement of) an organization that does not meet these requirements if it follows a prescribed procedure. LAMC § 44.15(b) (1)-(7). When the Department endorses an organization, it may waive certain requirements for professional fund-raisers.

Section 44.00 defines "Professional Fund-Raiser" as any person who for pecuniary compensation solicits contributions on behalf of another person. LAMC § 44.00(f). Paid employees of charitable organizations are <u>not</u> professional fund-raisers. <u>Id.</u> The ordinance contains numerous provisions regulating the solicitation of contributions by professional fund-raisers. Section 44.14(a) provides that no professional fund-raiser can solicit contributions without a license issued by the Department. Before issuing a license, the Department must investigate and verify that the applicant has not been convicted of a felony or misdemeanor involving moral turpitude within the past 7 years. LAMC § 44.14 (d). The license expires after 12 months, and it may be revoked if the

Department determines that any act of solicitation was illegal or fraudulent. LAMC §§ 44.14 (g), (h). Section 44.14 (j) provides similar rules for "solicitors."

Plaintiffs challenge numerous provisions of the ordinance on First Amendment grounds. They argue that requirements for obtaining an Information Card are unconstitutionally broad. They challenge Section 44.02 (b)(2), which requires that the Information Card contain particular information about the holder. Plaintiffs argue that the endorsement provision is unconstitutional. In addition, they challenge many of the provisions relating to professional fund-raisers and solicitors, including the revocation and expiration provisions. Plaintiffs assert that many of these provisions are either identical to, or more invasive than, provisions struck down a unconstitutional in Gospel Missions. On this basis, Plaintiffs argue that Defendants are in contempt of that order.

A. Preliminary Issues

1. Res Judicata / Collateral Estoppel

Throughout their opposition, Defendants rely heavily on the argument that Plaintiffs are barred by the doctrine of res judicata from objecting to provisions of the City ordinance that either (I) they did not object to in the first lawsuit, or (2) were not addressed by the district court in Gospel Missions. It is unquestionable that res judicata prevents a party from litigating grounds for, or defenses to, recovery that were previously available to the parties, but were not asserted in a prior proceeding. See Brown v. Felsen, 442 U.S. 127 (1979); Clarke v. Frank, **960 F. 2d 114?** (2d Cir. 1992); Meekins v. United Transp. Union, 946 F. 2d 1054 (4th Cir.

1991). If Plaintiffs now challenge a provision in current ordinance that was in the original version, [1] which Plaintiffs did not contest: in the previous suit, fendants could successfully assert a claim preclusion defen

Defendants' second argument, however, s more troublesome. Defendants contend that Plaintiffs e barred from objecting to a particular provision solely ause the district court did not address it in Gospel Missions support of their argument, Defendants point to the Supre Court's statement in Browner v. Felsen that res judicat prevents litigation of all grounds for, or defenses to, re ery that were previously available to the parties, regardles whether they were asserted or determined in the prior peeding." 442 U.S. at 131 (emphasis added) .

Claim preclusion may, in some circumces, be appropriate based solely on an earlier court'ailure to address a particular claim. For example, if a ntiff in a trademark infringement case pled alternative cau of action (e.g., Lanham Act and common law trademark ingement) and a court granted the plaintiff relief on one of e claims, the plaintiff could not refile the case and seek adonal relief based on the alternative cause of action that was ddressed by the court.

In this case, however, application of res juata would lead to a problematic result. Assume Plaintiffs oted in the first suit to every provision it now challenges, d that the district court addressed many, but not all, of allegedly

---

[1] Otherwise, Plaintiff would be barred by reslicata from asserting the claims here.

unconstitutional provisions in its order. The City amended the ordinance, attempting to fix the provisions that the court found unconstitutional, but leaving unchanged those provisions that the court did not address.

The City then asserts that Plaintiffs can not challenge those provisions that were not addressed in the first order and were not amended in the interim. If the Court found res judicata applicable in this context, it would immunize potentially unconstitutional sections of the ordinance (vis-a-vis Plaintiff), merely because the district court did not address them in its previous order. This works no injustice if the court's failure to consider these provisions was an implicit denial of the First Amendment challenge, but that inference cannot be drawn here. The district court did not have to address every provision challenged in the first action because, by overturning some of the key provisions, it invalidated enforcement of the entire ordinance. The district court may have felt that some of the remaining provisions were unconstitutional; it may not have. This Court simply cannot tell because it was not necessary for the district court to consider all of the potentially unconstitutional portions of the ordinance to invalidate it.

Defendants argue that it is unfair to force them to defend provisions of the ordinance that were not addressed by the court in the first action because they were not on notice that there was a need to amend the provisions. The Court has two responses. First, the illustration above assumes Plaintiff objected to the provisions in the first action. Defendants were, therefore, on notice of potential infirmities. Second, legislatures are often required to pass laws without guidance

from courts as to whether the provisions are constitutional. This case is no different.

For these reasons, the Court concludes that Plaintiffs are not barred from challenging particular provisions of the City ordinance that it objected to in the first action, but that the district court failed to address in Gospel Missions. A contrary result would reward Defendants' good fortune that the district court did not have the time or need to address all of Plaintiffs' claims in the first action.

2. Standing

Plaintiffs assert that they are not professional fund-raisers under § 44.00(f) because they do not solicit funds on behalf of another person. PI. Mot. p. 18. Defendants apparently agree. In an e-mail from City Attorney John Werlich to Bernard Wilson, Werlich "verified that GMA was not to be considered a professional fund raiser." PI. Mot. p. 19.

The Court concurs with the parties. It finds that GMA does not solicit funds on behalf of another person and is therefore not a professional fund-raiser. This finding raises a question of standing: can Plaintiffs, who are not professional fund-raisers, challenge the licensing requirements in § 44.14?

Plaintiffs argue that they have standing under the well-established rule that "a litigant whose own activities are unprotected [under the Constitution] may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court." Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. 620, 634 (1980) (citations omitted);

See also Freedman v. Maryland, 380 U.S. 51, 56 (1965) ("In the are of freedom of expression it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license.").

Schaumberg and Freedman do not support Plaintiffs' claim of standing. Those cases address a fundamentally different situation than exists here. Schaumberg and Freedman hold that a person may challenge an overly broad statute, even though his conduct could be prohibited under a properly drawn statute, that is, even though the conduct is not protected under the Constitution. For example, the purveyor of constitutionally unprotected obscene materials can challenge a statute that bans all expressions of nudity on the ground that it is overbroad. A prerequisite to such a challenge, however, is that the plaintiff's conduct is actually covered by the statute. Schaumberg and Freedman do not hold that persons not affected by a statute limiting free expression can bring a facial challenge. The litigant may challenge an overbroad statute only "[g]iven a case or controversy." Schaumberg, 444 U.S. at 634.

Plaintiffs here seek to challenge provisions of the ordinance that require licensing of professional fund-raisers. Yet Plaintiffs are not professional fund-raisers, and they are unaffected by these provisions. Schaumberg and Freedman are simply inapposite. Neither purports to abrogate the traditional injury requirement of a case or controversy. Those cases merely hold that a litigant whose conduct is unprotected by the Constitution can still challenge an overbroad statute which

proscribes that conduct. Schaumberg and Freedman do not hold (as Plaintiffs seem to suggest) that anyone can challenge a statute restricting speech on overbreadth grounds, whether or not they have suffered an actual injury. The Court thus concludes that Plaintiffs cannot establish the requisite injury for standing to challenge LAMC § 44.14.

B. Applicable Law

Plaintiffs argue that provisions of the ordinance regulating solicitation of charitable contributions violate the First Amendment of the Constitution and/or are contemptuous of the decision in Missions, 951 F. Supp. 1429. The law applicable to First Amendment challenges of licensing requirements and solicitation limits, and th law of contempt, are both relevant here.

1. First Amendment Challenges to Statutes Requiring Licensing for Solicitation

The Supreme Court has found charitable solicitations "so intertwined with speech that they are entitled to the protections of the First Amendment." Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947, 959 (1984); see also Schaumberg, 444 U.S. at 632 (" [C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests . . . that are within the protection of the First Amendment.") . Because charitable solicitation "is not primarily concerned with providing information about the characteristics and costs of goods and services," courts have not dealt with it "as a variety of purely commercial speech." Schaumberg, 444 U.S. at 632. Nevertheless, it is unquestioned that charitable solicitation is subject to

regulation. See id. The issue is whether the city "has exercised its power to regulate solicitation in such a manner as not unduly to intrude upon the rights of free speech." Id. at 633. A statute restricting charitable solicitation will be upheld if it "serves a sufficiently strong, subordinating interest that the [city] is entitled to protect," id. at 636, and if it is a "narrowly drawn regulation [] designed to serve those interests without unnecessarily interfering with First Amendment freedoms." Id. When the ordinance imposes licensing requirements on solicitors of charitable contributions, it must not place "unbridled discretion in the hands of a government official or agency." City of Lakewood v. Plain Dealer Pub'l Co., 486 U.S. 750, 757 (1988) .

2. Contempt

To establish contempt, plaintiffs must show (1) that the alleged contemnor violated a court order, (2) beyond substantial compliance, (3) not based on a good faith and reasonable interpretation of the injunction, (4) by clear and convincing evidence. Dual-Deck Video Cassette Recorder Antitrust Litigation, 10 F.3d 693, 695 (9th Cir. 1993). "[B]ecause the purpose of civil contempt is remedial, 'it matters not with what intent the defendant did the prohibited act.'" N.L.R.B. v. Ironworkers Local 433, 169 F.3d 1217, 1222 (9th Cir. 1999), quoting McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949). "An act does not cease to be a violation of law and of a decree merely because it may have been done innocently." Id.

C. The Challenged Provisions

1. LAMC § 44.02 (1)

Section 44.02(d) of the "old" ordinance–the ordinance struck down in Gospel Missions--provided that the Department had the power: "(d) To issue an Information Card no later than fifteen [15) days after receipt of a Notice of Intention; provided that where such notice is incomplete or otherwise fails to meet the requirements of Section 44.04 of this Article, the Department shall within ten (1) days after receipt of the notice notify the applicant in writing of the specific information needed to meet the requirements of Section 44.04." Gospel Missions overturned § 44.02 (d) on two bases. First, the court held the provision unconstitutional because it was derivative of § 44.04--a provision that the court found unconstitutional. The constitutionality of § 44.04 below is addressed below. The second basis was that § 44.02 (d) did not expressly require issuance of the Information Card when the applicant initially failed to meet the requirements of Section 44.04, but subsequently provided the required information. 951 F. Supp. at 1445

The "new" ordinance–the ordinance passed in response to Gospel Missions -- recodifies the provision as S 44.02(b)(1). It remedies the problem highlighted by the district court. Section 44.02 (b) (1) provides that the "Department shall issue an Information Card no later than 15 days after receipt of such additional information." LAMC § 44.02(b)(i)(emphasis added). The provision complies with Gospel Missions, and is neither contemptuous nor unconstitutional.

2. LMAC § 44.02 (b)(2)(i), (ii)

The old ordinance provided that Information Cards would indicate, among other things, (4) any additional information which in the opinion of the Department will be of assistance to the public in determining the nature and worthiness of the solicitation." Old LAMC § 44.02 (e)(4). Gospel Missions found that the provision was unconstitutional because it mandated speech that the solicitor would not otherwise make. 951 F. Supp. at 1445. The court held that the City cannot force a solicitor to disclose the City's views concerning the "nature and worthiness" of the solicitation. Id.

In response to Gospel Missions, the City removed subsection (e) (4) from the ordinance. The Information Cards no longer contain the City's views about the worthiness of the particular solicitor. Plaintiff argues, though, that the new ordinance still violates the 1997 order because it continues to require that the Information Card indicate whether or not the City "endorses" the solicitor. New § 44.02 (b) (2) states: "The Department shall indicate on all Information Cards the following: (i) That same is issued as information for the public and is not an endorsement; or (ii) That same is an endorsement if (i) hereinabove is omitted and the Department endorses pursuant to Section 44.15 of this article."

Section 44.02(b)(2)is not contemptuous of the Gospel Missions decision. The district court in the previous case addressed 01d § 44.02 (e)(4), but it did not discuss old subsections (e)(1) and (2)--the provisions at issue here. Thus, the new ordinance does not directly conflict with the decision in Gospel Missions.

Plaintiff could argue that the requirement that the Information Card indicate that it is, or is not, an endorsement violates the spirit of Gospel Mission's decision that subsection (e) (4) was unconstitutional because it mandated speech about the solicitor's worthiness. The Court would reject any such argument. Requiring that the Information Card indicate whether the solicitor is "endorsed" pursuant to Section 44.15 is entirely distinguishable from giving the City absolute discretion to pontificate about the solicitor's "nature and worthiness" on the card. Unlike old subsection (e)(4), the new ordinance does not give the City "unbridled discretion" to "compel[] disclosure [that] will almost certainly hamper the legitimate efforts of solicitors to obtain charitable funds." Gospel Missions, 951 F. Supp. at 1445.

Even assuming that the new ordinance violates the decision in Gospel Missions, Plaintiffs fail to demonstrate by clear and convincing evidence that the City's failure to remove these provisions from the ordinance was not based on a good faith and reasonable interpretation of the injunction. A finding of contempt is therefore inappropriate. See Dual - Deck, 10 F. 3d at 695.

The Court also rejects Plaintiff's claim that the provisions are unconstitutional irrespective of the Gospel Missions decision. Requiring that the solicitor's Information Card state that it either is, or is not, an endorsement does not "unduly [] intrude upon the rights of free speech." Schaumberg, 444 U.S. at 633. The provision is narrowly drawn, and it does not "unnecessarily interfer[e] with First Amendment freedoms." Id. at 636. In fact, the challenged provisions have virtually no effect on the ability of an organization to solicit charitable contributions.

3. LAMC § 44.02 (b) (2) (ill}

Plaintiff argues that § 44.02(b) (2) (iii) is unconstitutionally vague and overbroad. It provides that all Information Cards must indicate the "pertinent facts of the solicitation, including the commencement and termination dates." LAM § 44.02(b)(2)(iii). Plaintiff argues that the term "pertinent facts is so vague that it gives the City unlimited discretion to include its views of the solicitor on the Information Card.

This same provision existed in the old ordinance as § 44.02(e) (3). Gospel Missions did not address or strike down the section. The Court finds no basis for believing that the City's failure to remove this section was not based on a good faith and reasonable interpretation of the earlier decision. The Court therefore rejects Plaintiffs' contempt claim.

The Court also rejects Plaintiffs' claim that the provision is, in any event, unconstitutional. Plaintiff asserts that the term "pertinent facts" is so vague that it will allow the Department to include any facts about the solicitor on the Information Carded It is well-settled that "courts are obliged to impose a saving interpretation of an otherwise unconstitutional statute so long as it is 'fairly possible to interpret the statute in a manner that renders it constitutionally valid.'" Gray v. First Winthrop Corp., 989 F. 2d 1564, 1568 (9th Cir. 1993), quoting Communications Workers of America v. Beck, 487 U.S. 735, 762 (1988); see also, United States ex rel Madden v. General Dynamics Corp., 4 F.3d 827, 830 (9th Cir. 1993). In light of Gray, Madden, and Beck, the Court must, if possible, interpret § 44.02 (b) (2) (iii) to render it constitutional. The Court finds that there is an

available interpretation of subsection (iii) that would render the provision constitutionally valid. In fact, it is the more reasonable of two interpretations. Plaintiffs argue that the subsection (iii) gives the Department unbridled discretion to include facts about the nature and worthiness of the solicitor on the information card. The Court finds that the better interpretation--and one that renders the ordinance constitutional--is that the additional terms "commencement and termination dates" act as a limitation on the types of facts that may be included on the Information Card.[2] In other words, the Court construes subsection (iii) to apply only to procedural, non-qualitative[3] facts like commencement and termination dates. Given this construction, the provision does not unduly interfere with free expression so as to violate the First Amendment. See Schaumberg, 444 U.S. at 633.

4. Section 44.04

Section 44.04 provides that persons soliciting charitable contributions must first file a written Notice of Intention with the City and obtain an information card. LAMC § 44.04. It also lists the specific information that the solicitor must include in the Notice of Intention.

Gospel Missions struck down § 44.04 on numerous grounds. The provision originally stated that the "Notice shall

---

[2] This construction method is similar to the traditional contracts interpretation doctrine of ejusdem generis.

[3] By "non-qualitative, the Court means lacking in any qualitative judgment about the nature or worthiness of the charitable organization.

include, but not be limited to" the items listed in old subsections (a) through (h). The court found this clause unconstitutional because, by using the words "but not be limited to," the ordinance left unspecified the information that had to be included in the Notice of Intention. Gospel Missions, 951 F. Supp. at 1443. This gave the licensing authority "unbridled discretion" to deny an Information Card on the grounds that the Notice of Intention was not complete. Gospel Missions also found Section 44.04 unduly intrusive. The court specifically referred to subsection (f), which required the disclosure of a "detailed financial statement," and subsection (g), which demanded the name, address, and telephone number of each officer and member of the applicant's board of directors or trustees. The court found that "[s]uch disclosures directly expose the applicant's internal operations to public scrutiny and are unrelated to any legitimate governmental interest, including the City's stated interest in preventing fraudulent solicitations." Id. at 1443. It concluded that "sections 44.04 (f) and (g) are not narrowly drawn to serve the City's stated interests, and these provisions are unconstitutional on their face." Id. at 1444.

The new ordinance clearly remedies two of the district court's concerns. The clause "but not limited to" was removed from the ordinance. The requirement that the applicant present detailed financial records in the Notice of Intention has also been eliminated. Section 44.04 still requires the applicant provide the name, address, and telephone number of certain persons related to the organization. Defendants argue that these provisions nevertheless comply with the decision in Gospel Missions.

In striking down section 44.04, the district court in Gospel Missions held that the "disclosure requirements of the City ordinance are considerably broader and more intrusive than those at issue in [International Society for Krishna Consciousness of Houston. Inc. v. City of Houston, 689 F. 2d 541 (5th Cir. 1982)] ." 951 F. Supp. at 1443. Based on this statement, Defendants argue, it could reasonable, be inferred that the court approved of the solicitation ordinance at issue in City of Houston. That ordinance required applicants to complete a. registration statement with the business or residence address and telephone number of partners or associates of the charitable organization. The Fifth Circuit found the ordinance constitutional because the "information sought is purely objective--names, addresses, telephone numbers, and related matters of an identifying nature." City of Houston, 689 F. 2d at 547.

The new ordinance adopts almost verbatim the language from the City of Houston ordinance. Like the City of Houston ordinance, it "requires the applicant provide the name, address, and telephone number of particular persons related to the organization, but it allows the applicant to provide either home or business information. Defendants argue that, in light of the suggestion in Gospel Missions that the Houston ordinance was constitutional, the City was justified in amending the ordinance as it did.

Whether or not the new ordinance strictly complies with the decision in Gospel Missions, there is insufficient evidence to support a finding of contempt. The City eliminated the requirement that an applicant provide detailed financial information--the most intrusive portion of the provision. It removed the words "but not limited to," which the district

court found too discretionary. Finally, the City amended the ordinance to specify that an applicant can provide either home or business addresses and phone numbers. This provision is less intrusive of applicants' privacy. In addition, it is identical to provisions in the City of Houston ordinance upon which Gospel Missions seemingly placed its imprimatur. Thus, the new ordinance at the very least reflects a good faith reasonable interpretation of the injunction issued by the district court.

The Court also rejects Plaintiffs' argument that Section 44.04, if not contemptuous, is unconstitutional. The Supreme Court has held that "a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." Cantwell v. Connecticut, 310 U.S. 296, 300 (1940). The Court agrees with the Fifth Circuit that names, addresses, and telephone numbers are "of an identifying nature, and that requiring disclosure of this information is permissible under Cantwell. City of Houston, 689 F. 2d at 547.

Numerous other courts have found that ordinances regulating solicitation may require the disclosure of objective identifying information like addresses and telephone numbers. In American Targe Advertising, Inc. v. Giani, 199 F. 3d 1241 (10th Cir. 2000), for example, the court considered a First Amendment challenge to the Utah Charitable Solicitations Act. The Act required professional fund raisers to apply for and obtain a permit to solicit funds. While the court found some provisions unconstitutional, it upheld the registration and disclosure requirements, including a provision requiring

the applicant to provide his name, address, teleph number, and the name and address of any affili person organization. Id. at 1248. The court statehat "the registration and disclosure provisions of the h Act are narrowly tailored to serve the state's substantinterest in fighting fraud." Id.

Like the Utah Charitable Solicitations Act, ordinance at issue here is designed and intended to redufraudulent solicitation. Unquestionably, this is a "sufficiy strong, subordinating interest that the [City] is entitle protect. "Schaumberg, 444 U.S. at 636. The provisions uiring the applicant to submit home or business addresses elephone numbers are narrowly tailored to that substa interest. Moreover, these provisions do not unduly intr upon the applicant's free speech rights. The Court finds thgistration requirements not only constitutional, but appro e.

5. Section 44.04 (h)

When the City amended the ordinance, it ed a new provision requiring the applicant for an Inform Card to supply the names of any officer, director, truste artner, or employee engaging in solicitation of funds whas been convicted in the last seven years of a felony or lemeanor involving moral turpitude. Plaintiffs conte that this provision is unconstitutional. They argue thais overly intrusive and not tailored to the City's interest reventing fraud.

Courts addressing this issue in the past have id similar registration requirements constitutional. In Amn Trade, the Tenth circuit upheld a provision in the Ut haritable

Solicitation Act requiring that the applicant declare whether anyone involved in the solicitation process had previously been convicted of a crime involving moral turpitude. 199 F. 3d at 1248. The court found that this requirement, along with the other registration requirements, "directly promote[d] Utah's legitimate interest in combating fraud while not unnecessarily interfering with solicitors' protected speech." Id.

The Court finds that Section 44.04 (h) is constitutional. The provision is sufficiently tailored to the City's interest in preventing fraudulent solicitation. As the Tenth Circuit found in American Trade, the disclosure of solicitors with a criminal history--especially a history of crimes involving fraud or dishonesty--will aid the Department in ferreting out fraudulent practices. Moreover, the provision is not overly intrusive of the applicant's privacy. Though a person's criminal history may be sensitive information, it is widely available.[4] The City's interest in protecting residents outweighs the modest privacy concerns of applicants.

6. Section 44.15

Section 44.15 provides that the Department has the power to endorse charitable organizations that meet the requirements in subsections (a)(1) through (a)(9). These requirements include (1) that the applicant provide some service to the community, (2) that it not compensate the members of the board of directors or trustees, and (3) that it not pay out more

[4] California law provides an avenue for scholars, journalists, and other specified people to obtain this information. Cal. Govt. Code § 6254.

than 20 percent of any amount collected for solicitation expenses. When the Department endorses an organization, that fact is indicated on the Information Card. The Department may also waive the provisions of Sections 44.14(a) through (h) for any professional fund-raiser that it endorses. LAMC § 44.15 (d).

Plaintiffs argue that the endorsement provisions in Section 44.15 violate the First Amendment. Generally, they contend that the Department may not endorse one speaker over another. More specifically, they contend that Section 44.15 is unconstitutional because it vests complete discretion in the Department to decide whether to endorse a particular organization. That is, Section 44.1 simply states that the Department "shall have the power" to endorse an organization that meets the requirements of subsections (1) through (9); it is not required to do so. Plaintiffs also argue that the endorsement provisions are unconstitutional because they permit the Department to discriminate among speakers by waiving the requirements In Sections 44.14(a) through (h).

As stated above, Plaintiffs do not have standing to challenge provisions relating to professional fund-raisers. Thus, the Court will not consider Plaintiffs' contentions that Section 44.15 is unconstitutional because it allows the Department to waive any of the requirements in Sections 44.14(a) through (h).

Plaintiffs' remaining arguments that the endorsement provisions are unconstitutional are unpersuasive. Plaintiffs cite various cases holding that the solicitation of charitable donations cannot be regulated based on who is doing the soliciting. They cite Perry v. Los Angeles Police Dept., 121

F. 3d 1365 (9th Cir. 1997), in which the Ninth Circuit considered a challenge to a Los Angeles Municipal Ordinance that prohibited solicitation on the Venice Beach boardwalk by anyone other than non-profit organizations. The court held: "This type of speaker-based discrimination is unacceptable." Id. at 1371. The court stated that "the solicitation of charitable donations [can] not be regulated by a distinction based on who was doing the soliciting." Id.

The endorsement provisions before this Court are easily distinguished from the ordinance struck down in Perry. While the ordinance in Perry prohibited all but non-profit organizations from soliciting charitable donations, the endorsement provisions in question here do not serve to prevent an applicant from soliciting contributions. In fact, the only fallout from the City's refusal to endorse an applicant is that the applicant's Information Card will note that the card does not signify an endorsement. This requirement does not "unduly . . . intrude upon the rights of free speech," Schaumberg, 444 U.S. at 633, nor does it impose a "direct restriction" on protected First Amendment activity. Id. at 636.

The Court rejects the argument that the provision is unconstitutional because it vests discretion in the Department. The Court agrees that "a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes [an unconstitutional] prior restraint." City of Lakewood v. Plain Dealer Publ. Co., 486 U.S. 750, 757 (1988). In the Court's opinion, however, City of Lakewood does not hold that all discretionary components of a licensing statute are unconstitutional. The Supreme Court was concerned about statutes that "vest in [governmental] officials

the undefined power to determine what messages residents will hear." Hynes v. Mayor of Oradell, 425 U.S. 610, 617 (1976) . In other words, City of Lakewood and Hynes are concerned about laws that place in the government's hands the unfettered discretion to determine who can solicit funds or engage in other protected speech. Here, the endorsement provisions do not vest the Department with unbridled discretion to determine who can solicit funds and who cannot. They simply allow the Department to choose certain organizations that it deems worthy, and to endorse those organizations on their Information Card. The lack of an endorsement does not in any way prevent an applicant from soliciting funds. For this reason, the Court does not believe Section 44.15 runs afoul of the First Amendment.[5]

IV. Conclusion

For the reasons stated above, the Court finds that the provisions of the Los Angeles Municipal Code §§ 44.00-44.15 relating to the solicitation of contributions by charitable organizations are neither contemptuous of .the district court decision in Gospel Missions, 951 F. Supp. 1429, nor unconstitutional. The Court therefore denies Plaintiffs' motion for summary judgment and grants summary judgment in favor of Defendants. It should be reemphasized that this decision does not address the constitutionality of those provisions relating to professional fund-raisers and solicitors.

---

[5] The Court might easily reach a different conclusion if it had jurisdiction to consider the Department's discretion to waive the requirements of Sections 44.14(a) through (h) after CD endorsing an applicant organization.

IT IS SO ORDERED.

DATED: 5/11/2000

/s/_____
STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 99-7038 SWV (AIJx)

[Filed May 11, 2000]

GOSPEL MISSIONS OF AMERICA, et al., Plaintiffs,	)
v.	)
CITY OF LOS ANGELES, et al., Defendants.	)

JUDGMENT

Pursuant to the Court's order granting summary judgment in favor of Defendants, the Court hereby enters judgment in Defendants' favor. Plaintiffs shall take nothing as against Defendants.

IT IS SO ORDERED.

DATED: 5/11/2000

/S/_____
STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV-93-1684 KMW (JGx)

[Filed January 10, 1997]

GOSPEL MISSIONS OF AMERICA, a religious corporation, et al., *Plaintiffs*,

v.

GEORGE BENNETT, etc., et al., *Defendants*.

Kim McLane Wardlaw,
United States District Judge

OPINION

ORDER GRANTING PARTIAL SUMMARY JUDGMENT IN FAVOR OF PLAINTIFFS ON THEIR FIRST AND SECOND CAUSES OF ACTION

This action arises out of a search for and seizure of property belonging to Gospel Missions of America ("GMA") and certain of its individual members. The search and seizure

took place pursuant to a warrant that issued based upon probable cause to believe that the property was associated with an illicit charitable operation in violation of Los Angeles City and County ordinances regulating charitable solicitations. In the cross-motions for summary judgment now before the Court, Defendants assert, and Plaintiffs challenge, the facial validity of these ordinances. This challenge requires the Court to weigh the substantial and legitimate interests of Los Angeles City and County in protecting their citizens against fraud and harassment in the solicitation of charitable funds against the well-established and fundamental free speech interests inherent in that solicitation. Having reviewed all the relevant pleadings, papers and records on file in this case, and having heard the oral argument of counsel at the April 29, 1996 hearing, the Court finds, for the reasons stated below, that certain provisions of the challenged City and County ordinances are facially invalid under the First and Fourteenth Amendments to the United States Constitution. Accordingly, the Court invalidates in part and upholds in part the Los Angeles City and County ordinances at issue, and grants partial summary judgment in favor of Plaintiffs on their first and second causes of action.

I. BACKGROUND

GMA is a small religious and missionary organization registered as a California non-profit corporation and located in Rowland Heights, California. The individual plaintiffs are members of GMA, and were physically present at the place

and time of the incidents giving rise to this action. Cmplt. PP 1, 2.[1]

On May 28, 1992, at about 7:00 a.m., approximately forty Los Angeles County Sheriffs' Deputies raided five separate properties owned or leased by GMA, located at 1803 Nausika, 1808 Nausika, 19655 Carreta Drive, 2330 Annadale Avenue, and 19521 Markstay Street, in the City of Rowland Heights, California ("the GMA properties"). Certain members of GMA, including the individual plaintiffs, resided at the GMA properties at the time of the raids.

The raids of the GMA properties were conducted pursuant to a warrant issued on May 26, 1992. The warrant was based upon an affidavit submitted and signed by George Bennett ("Bennett"), a retired peace officer and civilian criminal investigator for the Los Angeles County Sheriffs Department. County Defendants' Exhibit B. According to the affidavit, there was probable cause to believe that articles commonly found in businesses associated with the operations of illicit charitable operations, including documents, financial records, computer data, monies, illegal firearms, and illegal drugs, were located at the GMA properties. *Id.*

---

[1] The individual plaintiffs are David Amador, Thomas Bayer, Warren Daly, P.J. Dibuono, Vincent Dibuono, Steven Gardner, Martin Jepsen, James Kahl, James Lalor, John Love, Ronald Prudhomme, Charles Richardson, Larry Richardson, Albin Vaznelis, Mylena Vaznelis, Ruth Washington, Paul Winn, Eric [sic] Wagner II, Brenda Wagner, Heidi Wagner, and Frederich Wagner.

According to Plaintiffs, during the raids a "great deal of each of plaintiffs' property was seized, despite the fact that the only plaintiff alleged to have committed a crime and named by the warrant was Erich Wagner II." Plaintiffs further allege that the search and seizure was conducted at gunpoint, and "has had a devastatingly chilling effect upon all of them, which has resulted in damage to the church's reputation and a significant reduction in church membership in outreach activities, deprivation of property, and monetary damage as well as severe emotional and mental distress for all plaintiffs." Plaintiffs maintain that neither guns nor drugs were found pursuant to the raids, but that extensive amounts of GMA's records and files were seized.[2] Following the search and seizure, neither GMA nor any of the individual plaintiffs was arrested or charged with any crime. *See* Plaintiffs' Memorandum of Points and Authorities in Opposition to the City and County Defendants' Motions for Summary Judgment ("Plaintiffs' Opp.") at 4.

On January 10, 1994, Plaintiffs filed a Complaint for Injunctive and Declaratory Relief and Damages against Bennett, the Los Angeles County Sheriffs Department ("LACSD"), the County of Los Angeles ("the County"), Shirley Flucus ("Flucus"), Dr. Robert Burns ("Burns"), the Los Angeles Department of Social Services ("LADSS"), and the City of Los Angeles (the "City").[3] In their first and

---

[2] Plaintiffs claim that, despite a court order requiring the return of all seized property, defendants have yet to return some of the seized property. Plaintiffs' Appendix at 188-89, 203-05, 240-44.

[3] The individual defendants are sued in their individual and official capacities. Bennett, LACSD, and the County are

second claims for relief, Plaintiffs allege that the Los Angeles Charitable Solicitation Ordinances, Municipal Code (L.A.M.C.) Chapter IV, Article 4, sections 44.00-44.15 ("the City ordinance"), and Los Angeles County Code (L.A.C.C.), Title 7, Divisions 1 and 2, Chapters 7.02-7.92 ("the County ordinance") are unconstitutional, both facially and as applied to Plaintiffs. Cmplt. PP 19-21, 23-25.[4] Accordingly, Plaintiffs request a declaratory judgment that the City and County ordinances are unconstitutional and seek to enjoin their enforcement. Cmplt. at 12.

On February 26, 1996, a status conference was held in this case. At that time, the Court ordered, *inter alia,* that the parties submit briefs addressing the facial constitutionality of the City and County ordinances. At the hearing of the matter on April 29, 1996, the Court asked Plaintiffs to identify the specific provisions of the City and County ordinances that Plaintiffs contend are unconstitutional. Because Plaintiffs were unable to provide an adequate response to the Court's inquiry, the Court ordered that Plaintiffs submit additional briefs identifying the allegedly unconstitutional provisions and setting forth specific authority supporting their position.

---

hereinafter collectively referred to as "the County defendants." Flucus, Burns, LADSS, and the City are hereinafter collectively referred to as "the City defendants."

[4] Specifically, Plaintiffs allege that the County and City ordinances are "facially overbroad and in violation of the First Amendment rights to free speech, free assembly and free exercise of religion, and deny Plaintiffs of their constitutional rights to Equal Protection and Due Process under the Fourteenth Amendment." Cmplt. P 20.

Plaintiffs did so on May 3, 1996, and, on May 10, 1996, the City and County defendants filed responsive briefs. Plaintiffs' facial attack on the City and County ordinances is now before the Court.[5] The Court will treat the parties' "trial briefs" as cross-motions for partial summary judgment pursuant to Fed. R. Civ. P. 56(a) and (b).

II. THE CITY AND COUNTY ORDINANCES

The challenged ordinances are local legislative efforts to regulate charitable solicitations. They make it unlawful to solicit funds for charitable purposes without complying with certain registration, identification, and financial disclosure requirements. Although the City and County ordinances are similar, they are not identical. Therefore, the Court will address the provisions of each ordinance separately.

A. The City Ordinance.

The City ordinance prohibits the solicitation of charitable contributions unless a "Notice of Intention" is filed with the Social Services Department ("the Department") 15 days before the solicitation begins.[6] L.A.M.C. § 44.04. This Notice of Intention must include detailed information regarding the purpose of the solicitation, the dates between which the solicitation will occur, a detailed financial

---

[5] In this Order, the Court considers only those provisions specifically challenged by Plaintiffs in their Supplemental Brief.

[6] The term "charitable" is defined to "include philanthropic, social service, benevolent and patriotic, whether they are actual or purported." L.A.M.C. § 44.00(b).

statement, and other similar information. L.A.M.C. § 44.04. With each Notice of Intention, solicitors must also file statements of agreements made with an agent, solicitor, professional fund-raiser, or manager or conductor. If the General Manager of the Department deems such statements as "not disclosing for the public sufficient information concerning the facts required to be stated therein," the General Manager may request additional information. L.A.M.C. § 44.05.

In addition, all persons soliciting charitable contributions must obtain an "Information Card" from the Department, and give or exhibit the Information Card (or in printed, broadcast, or telephoned solicitations otherwise provide the information contained in the Information Card) to persons solicited. L.A.M.C. §§ 44.02, 44.09. Within thirty days after the termination date of the solicitation, the solicitors are required to file a "Report of Results of Activity" detailing all receipts, expenses, and distributions of proceeds. L.A.M.C. § 44.10.

Under the statutory scheme, the Department has, *inter alia,* the following powers:

> (a) To investigate statements on: (1) the Notice of Intention and information submitted in connection therewith; and (2) the Report of Results of Activity and information submitted in connection therewith;
>
> (b) To have access to and inspect and make copies of all books, records and papers, relating to any solicitation and the distribution of any contribution received therefrom, of such person by whom or on whose behalf such solicitation is made;

(c) To investigate the method of making or conducting any such solicitation;

(d) To issue an Information Card no later than fifteen (15) days after receipt of a Notice of Intention; provided that where such notice is incomplete or otherwise fails to meet the requirements of Section 44.04 [Notice of Intention Provisions] of this Article, the Department shall within ten (10) days after receipt of the notice notify the applicant in writing of the specific information needed to meet the requirements of Section 44.04.

(e) To issue Information Cards to persons meeting the requirements of this Article which shall indicate:

(1) That same is issued as information for the public and is not an endorsement; or

(2) That same is an endorsement if (1) hereinabove is omitted and the Department endorses pursuant to Section 44.15 of this Article;

(3) The pertinent facts of the solicitation, including the commencement and termination dates;

(4) Any additional information which in the opinion of the Department will be of assistance to the public in determining the nature and worthiness of the solicitation;

(f) To maintain a constant survey of the field of charities with regard to the need and the work being

> done in order to secure intelligent cooperation among all charities in the City so that a comprehensive and economical plan in philanthropy may be attained;
>
> (g) To recall and declare void any Information Card upon receipt of additional information by the Department which renders incorrect any statement set forth on such Information Card. The Department may amend or correct such statement and issue a new Information Card. Upon request, all Information Cards shall be returned to the Department within 48 hours; . . . .

L.A.M.C. § 44.02.

The City ordinance further authorizes the Board of Social Service Commissioners ("the Board") to publish the results of investigations conducted under subsections (a), (b), and (c) of section 44.02, to publicize certain information obtained during such investigations, and to conduct hearings regarding the denials and revocations of licenses and endorsements. L.A.M.C. § 44.01.

The statute also provides that all solicitors of charitable contributions must maintain a conventional accounting system. L.A.M.C. § 44.06.

Special provisions govern "Professional Fund-Raisers and Solicitors." Section 44.14 prohibits "professional fund-raisers" from soliciting charitable contributions without a

license issued by the Department.[7] L.A.M.C. § 44.14. Upon receiving an application for a professional fund-raiser license, the Department may conduct an investigation pursuant to L.A.M.C. § 44.14(d):

> The Department shall make as intensive an investigation of the applicant as it deems desirable, and shall verify:
>
> (1) That the applicant is of good character;
>
> (2) That the applicant has sufficient financial resources to be able to successfully fulfill such applicant's obligations incident to a charitable solicitation;
>
> (3) That all statements in the application are true.

The applicant is also required to post a $ 5,000 bond to "provide for the reimbursement for direct loss of money or property sustained through any dishonest or criminal act on the part of the applicant." L.A.M.C. § 44.14(e).

---

[7] The term "Professional Fund-Raiser" is defined as any person who, "for pecuniary compensation or consideration received," solicits charitable contributions for or on behalf of any other person. L.A.M.C. § 44.00(f). "Pecuniary compensation or consideration," includes, but is not limited to, "participation on a percentage basis in any funds solicited or raised for or on behalf of any other person." *Id.* A natural person who is "a bona fide paid employee of a charitable organization endorsed by the Department" is not considered a professional fund-raiser under the article. *Id.*

The Department shall issue a professional fund-raiser license when all conditions set forth in L.A.M.C. section 44.14 are met. If all conditions are not met, the statute provides that the application shall be denied after notice to the applicant and, if requested, a hearing held before the Board. L.A.M.C. § 44.14(f). Further, a professional fund-raiser license may be revoked if the Department finds that a solicitation is "illegal or fraudulent" or that there exists any of the grounds upon which the issuance of such license would be denied. L.A.M.C. § 44.14(g).

Additional provisions of the City ordinance exempt certain solicitations from the statutory requirements, including solicitations made solely for evangelical, missionary, or religious purposes. L.A.M.C. § 44.12. However, where any solicitation is made for evangelical, missionary, or religious purposes, but "in a manner which, in the opinion of the Department, is calculated to give, or may give, the impression . . . that the purpose of such solicitation is either in whole or in part charitable," the Department is authorized to investigate the matter and publicize its findings "in such a manner as it deems best to advise the public of the facts of the case." L.A.M.C. § 44.12. Finally, the Department has the power to endorse charitable organizations, and must do so if the organization requests an endorsement and complies with certain specified requirements. The Department may refuse to endorse or revoke an endorsement if those requirements are not met, subject to certain procedural guidelines. L.A.M.C. § 44.15.

The violation of any provision of the City ordinance is a misdemeanor, punishable as provided in section 11.00(m) of the Los Angeles Municipal Code.

B. The County Ordinance.

The County ordinance similarly prohibits any person from soliciting contributions for any charitable purpose or in the name of, or on behalf of, any charitable association, unless the person first obtains an "information card" from the County or possesses a city information card which has been approved by the County. L.A.C.C. § 7.24.030.[8] It further provides certain procedures which must be followed in order to obtain an information card.[9] Under L.A.C.C. § 7.24.040, each person desiring an information card must file an application with the business license commission stating the purpose of the solicitation, the need for the solicitation,

---

[8] Pursuant to L.A.C.C. § 7.24.030:

> A person shall not solicit within this county any contribution for any charitable purpose, or in the name of, or on behalf of, any charitable association unless such person first either obtains from the [business license] commission an information card issued pursuant to this chapter or pursuant to Ordinance 2777, entitled "An ordinance regulating the soliciting of contributions for charitable or philanthropic purposes in the county of Los Angeles," adopted July 27, 1936, or possesses a city information card which has been approved by the [business license] commission pursuant to Part 2 of this chapter, or pursuant to said Ordinance 2777.

L.A.C.C. § 7.24.030. Ordinance 2777 has not been challenged in this action.

[9] Applicants may obtain a temporary license through payment of a license fee. L.A.C.C. § 7.06.060.

and the expenses of the solicitation, and must present extensive financial reports and other detailed information. L.A.C.C. § 7.24.040. When applying for a county information card, the applicant may submit to the commission a city information card covering the same solicitation. L.A.C.C. § 7.24.060. The commission may require that the information card itself disclose certain information. L.A.C.C. § 7.24.120.

Whenever, in the opinion of the business license commission, the application does not disclose sufficient information, then, upon the request of the commission, the applicant shall file within 48 hours such additional information as the commission may specifically require. L.A.C.C. § 7.24.070.

The business license commission is authorized to act as follows:

> The business license commission may grant, deny or revoke a county information card, and may approve, disapprove or withdraw its approval of a city information card upon the same grounds and pursuant to the same procedure as licenses may be granted, denied, or revoked respectively, pursuant to Division 1 of Title 7 of this code.

L.A.C.C. § 7.24.080.[10] Moreover, L.A.C.C. § 7.24.090 provides:

> In addition to any ground of denial in Division 1 of this title, the commission may deny an information card or may refuse to approve a city information card if, because of inefficient operation, the payment of one or more salaries in amounts substantially greater than the reasonable value of the services performed, or for other similar reasons the percentage of the contributions raised which will remain available for application to the specific purposes declared in the application as the object of the solicitation is unreasonably small and the commission so finds.

L.A.C.C. § 7.24.090.

After issuing an information card, the County may recall or revoke it:

> In addition to any ground specified in Division 1 of this title, upon receipt of additional information which, in the opinion of the commission, renders incorrect any statement set forth in any information card, the commission may revoke its approval of any information card approved by it, and may recall any information card issued by it.

---

[10] Title 7, Division 1 of the L.A.C.C. sets forth the General Licensing Procedures for the County of Los Angeles. Chapter 7.08 governs the conditions upon which business licenses may be denied or revoked.

L.A.C.C. § 7.24.130. Upon recall of an information card, "the commission may amend or correct such information card or issue in lieu thereof a new information card amended or corrected in accordance with the additional information received." L.A.C.C. § 7.24.150. Section 7.24.260 provides for return of the information card at the request of the Commission upon completion of the solicitation or expiration of the card.

Section 7.24.180 exempts from the statute "solicitations made solely for evangelical, missionary or religious purposes." L.A.C.C. § 7.24.180. Section 7.24.350 allows the Commission to investigate solicitations claiming these purposes.

Any person violating any provision of the County ordinance is guilty of a misdemeanor punishable by a fine not exceeding $ 1,000 or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. L.A.C.C. § 7.04.320. "Each such person is guilty of a separate offense for every day during any portion of which any violation of any of the provisions of [the statute] is committed, continued or permitted by such person." *Id.; see also* L.A.C.C. §§ 7.04.300, 7.04.330-7.04.380 (imposing additional criminal and civil penalties for violations of County licensing provisions).

III. ANALYSIS

A. Legal Standard.

The facial invalidity of the City and County ordinances is a question of law properly determined by the Court. *See*

Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 634, 63 L. Ed. 2d 73, 100 S. Ct. 826 (1980). Accordingly, the Court may rule on the merits of Plaintiffs' facial challenge to the constitutionality of the City and County ordinances pursuant to Fed. R. Civ. P. 56. *Schaumburg,* 444 U.S. at 634-35; *Holy Spirit Ass'n for the Unification of World Christianity v. Hodge,* 582 F. Supp. 592, 595 (N.D. Tex. 1984).

"In the area of free expression, a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship." *City of Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 757, 100 L. Ed. 2d 771, 108 S. Ct. 2138 (1988). However, "[a] narrowly drawn ordinance, that does not vest in [governmental] officials the undefined power to determine what messages residents will hear may serve [the government's] important interests without running afoul of the First Amendment." *Hynes v. Mayor of Oradell,* 425 U.S. 610, 617, 48 L. Ed. 2d 243, 96 S. Ct. 1755 (1976).

Our First Amendment jurisprudence has long found charitable solicitations "so intertwined with speech that they are entitled to the protections of the First Amendment." *Secretary of State of Maryland v. Joseph H. Munson Co.,* 467 U.S. 947, 959, 81 L. Ed. 2d 786, 104 S. Ct. 2839 (1984). "Prior authorities . . . clearly establish that charitable appeals for funds, on the street or door to door, involve a variety of speech interests -- communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes -- that are within the protection of the First Amendment." *Schaumburg,* 444 U.S. at 632 (citing, *e.g., Hynes,* 425 U.S. at 620). Because charitable solicitations

involve more than "providing information about the characteristics and costs of goods and services," the Supreme Court's decisions have not dealt with them as "purely commercial speech." *Schaumburg,* 444 U.S. at 632; *Riley v. National Fed'n of the Blind,* 487 U.S. 781, 789, 101 L. Ed. 2d 669, 108 S. Ct. 2667 (1988).

At the same time, "soliciting financial support is undoubtedly subject to reasonable regulation but the latter must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and for the reality that without solicitation the flow of such information and advocacy would likely cease." *Schaumburg,* 444 U.S. at 632. The Supreme Court has recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating solicitations. "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." *Cantwell v. Connecticut,* 310 U.S. 296, 306, 84 L. Ed. 1213, 60 S. Ct. 900 (1940).

Therefore, "the issue is whether the [legislative body] has exercised its power to regulate solicitation in such a manner as not unduly to intrude upon the rights of free speech." *Schaumburg,* 444 U.S. at 633; *Hynes,* 425 U.S. at 616. When a particular law imposes a "direct restriction" on protected First Amendment activity, the statute "cannot be sustained unless it serves a sufficiently strong, subordinating interest

that the [governmental agency] is entitled to protect." *Schaumburg,* 444 U.S. at 636. Once that legitimate interest is identified, however, to survive a First Amendment challenge, the ordinance must be narrowly tailored to serve the state's legitimate interests "without unnecessarily interfering with First Amendment freedoms." *Id.* at 637; *see also Riley,* 487 U.S. at 789; *Secretary of State of Maryland v. Joseph H. Munson Co.,* 467 U.S. at 961.[11]

B. Plaintiffs Are Entitled To Partial Summary Judgment As To Their First and Second Causes of Action.

Plaintiffs argue that the City and County ordinances are unconstitutional because they grant City and County officials "unbridled discretion" to deny them their First Amendment rights; that they fail to provide adequate procedural safeguards; and that they violate the Religious Freedom

---

[11] The County defendants urge that when considering a facial challenge to a particular statute, "all presumptions and intendments are in favor of the constitutionality of the enactment." County Brief at 5-6 (citing, *e.g., Duke Power Co. v. Carolina Environmental Study Group, Inc.,* 438 U.S. 59, 57 L. Ed. 2d 595, 98 S. Ct. 2620 (1978)). The cases the County defendants cite, however, deal with statutes regulating economic activity and, as such, are inapplicable in the First Amendment context. Nevertheless, the Court recognizes that, in any context, the Court is obligated to adopt a construction of a challenged statute consistent with constitutionality, where it is possible to do so. *International Soc'y for Krishna Consciousness of Houston, Inc. v. City of Houston,* 689 F.2d 541, 547 (5th Cir. Unit A 1982).

Restoration Act, 42 U.S.C. §§ 2000bb *et seq.*[12] Relying heavily on *International Soc'y for Krishna Consciousness of Houston, Inc. v. City of Houston,* 689 F.2d 541 (5th Cir. Unit A 1982), the City and County defendants maintain that the challenged ordinances are constitutional because they vest no discretion in any licensing official.

For the reasons set forth below, the Court concludes that certain provisions of the City and County ordinances constitute direct restraints on protected First Amendment activity. Although the City and County have substantial and legitimate interests in preventing fraud and harassment in the solicitation of funds, the challenged statutory provisions are not narrowly tailored to achieve those objectives. Accordingly, portions of the City and County ordinances are unconstitutional on their face. Plaintiffs thus are entitled to partial summary judgment as to their first and second claims for relief.

1. The *City of Houston* Decision.

The City and County defendants argue that in *City of Houston* the Fifth Circuit rejected a facial attack on an

---

[12] Plaintiffs have standing to bring a facial challenge to the City and County ordinances. "In the area of freedom of expression it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license." *Freedman v. Maryland,* 380 U.S. 51, 56, 13 L. Ed. 2d 649, 85 S. Ct. 734 (1965); *see Schaumburg,* 444 U.S. at 634.

ordinance "strikingly" similar to the ordinances here at issue. County Brief at 12; City Brief at 3.

In *City of Houston,* the challenged ordinance ("the Houston ordinance") required persons desiring to solicit funds for charitable purposes to comply with certain registration, identification, and financial disclosure requirements. A registration statement containing "extremely detailed information" was required to be filed with the tax assessor-collector of Houston. The tax assessor-collector was required within ten days of filing to approve the application or explain why the statement did not provide the requisite information. Upon approval of the application, the tax assessor-collector issued the applicant a certificate of registration and a solicitor's identification card. All solicitors were required to visibly display the identification cards. *City of Houston,* 689 F.2d at 544. The Fifth Circuit held this regulatory framework constitutional because it did not vest any discretion in the tax assessor-collector. *Id.* at 546.

Recent amendments to the Houston ordinance had radically simplified its statutory scheme and removed certain provisions which would have rendered it unconstitutional under *Schaumburg.*[13] *City of Houston,* 689 F.2d at 547. The

---

[13] These amendments were enacted by the City of Houston in response to the filing of the operative complaint and were designed to correct the alleged constitutional infirmities. Specifically, the City "substituted a 'certificate of registration' for a license and ... [made] its issuance mandatory." *Id. at 543.* The trial court nevertheless had struck down the statute because it concluded that the tax assessor-collector was necessarily required to exercise some discretion when reviewing the application and the ordinance lacked

Fifth Circuit noted that the recent amendments (1) deleted language authorizing the tax assessor-collector "'to make such investigation as he may deem necessary to ascertain the truth'"; (2) withdrew the tax assessor-collector's authority "to refuse to issue a license where any statement in the application is 'false, fraudulent, or untrue'"; and (3) "eliminated the provision authorizing the issuing authority to examine the application, ascertain the truth of the information set forth, and disqualify an applicant when more than 25 percent of the funds to be collected is used for salaries, expenses, and costs of solicitation and collection." *City of Houston,* 689 F.2d at 546-47 (quoting language deleted by the amendment). Of significance to the court was that:

> The repealed provision is exactly the regulation which the Supreme Court found to be unconstitutional in *Schaumburg*. The obvious purpose of the amendment was to remove any language that might be construed as giving discretionary authority, that is censorship authority, a prior restraint in "granting or refusing a license" that can be saved from infirmity only by adequate procedural safeguards. *Id.* at 547.

Thus the defendants' reliance on *City of Houston* is misplaced. The City and County ordinances differ from the Houston ordinance in several material respects. Most significantly, unlike the Houston ordinance, the City and County ordinances do not provide City and County officials with "purely ministerial" powers, but rather improperly

---

the requisite procedural safeguards for the exercise of that discretion. *Id. at 545.*

authorize the discretionary denial of rights protected by the First Amendment.[14]

---

[14] The City and County defendants also rely on the California Supreme Court's decision in *Gospel Army v. City of Los Angeles,* 27 Cal. 2d 232, 163 P.2d 704 (1945), *appeal dismissed,* 331 U.S. 543, 91 L. Ed. 1662, 67 S. Ct. 1428 (1947), to support their argument that ordinances "strikingly similar" to the City and County ordinances have been upheld. The *Gospel Army* decision, however, predated significant United States Supreme Court decisions in this area, *see, e.g., Riley v. National Fed'n of the Blind,* 487 U.S. 781, 101 L. Ed. 2d 669, 108 S. Ct. 2667 (1988); *Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620, 63 L. Ed. 2d 73, 100 S. Ct. 826 (1980); *Hynes v. Mayor of Oradell,* 425 U.S. 610, 48 L. Ed. 2d 243, 96 S. Ct. 1755 (1976); *Freedman v. Maryland,* 380 U.S. 51, 13 L. Ed. 2d 649, 85 S. Ct. 734 (1965). And, in any event, it is not binding upon this Court.

In addition, the United States Supreme Court cast grave doubts on the constitutionality of the statutory provisions at issue in and the correctness of the *Gospel Army* decision after dismissing the appeal of that decision on jurisdictional grounds. *Rescue Army v. Municipal Ct.,* 331 U.S. 549, 580-84, 91 L. Ed. 1666, 67 S. Ct. 1409 (1947). In dicta, the *Rescue Army* Court specifically noted that the *Gospel Army* decision, regarding portions of the statute substantially identical to those at issue here, relied on a construction that was "to say the least, ambiguous." *Rescue Army,* 331 U.S. at 581. While declining to actually express an opinion on the constitutionality of the City ordinance at issue in *Gospel Army,* the Court clearly considered one of the possible interpretations of that decision to be of questionable validity:

> There is, of course, a very substantial difference between the two possible views of the court's construction of the ordinances, for constitutional as well as other purposes. ...

2. The City Ordinance Directly Restrains Protected First Amendment Activity and Is Not Narrowly Tailored To Prevent Fraud.

a. The City Ordinance Is Impermissibly Vague and Grants City Officials Overly Broad Discretion To Restrain Protected First Amendment Activity.

The City defendants contend that the City ordinance is necessary to prevent fraudulent charitable solicitations, and that the ordinance should be upheld for "precisely the same reasons" as those relied upon by the court in *City of Houston*. City Brief at 4; City Reply at 1, 2. They claim that "if the solicitor provides the required identifying information, he or she will be issued the Information Card." City Brief at 5. With respect to the regulation of professional fund-raisers, the City defendants acknowledge that the City ordinance's requirements are "more extensive," but conclude that they

---

> Obviously, it would be one thing to sustain the licensing provisions if they are to be taken as of the 'automatic mere identification' type, and quite another if they involve the very considerable degree of discretion upon the part of administrative officials which the clearly applicable provisions of the ordinance seem to require by their terms and indeed by the state court's ruling.

Rescue Army, 331 U.S. at 583. *See also* Justice Rothman's concurring opinion in *Perlman v. Municipal Court*, 99 Cal. App. 3d 568, 581-83, 160 Cal. Rptr. 567 (1979) (noting that although *Gospel Army* has never been questioned or overruled, its analysis would not stand scrutiny under recent Supreme Court precedent).

"do not allow the Department to make a value judgment as to the content of the protected speech." City Brief at 5.

The City defendants' arguments do not withstand scrutiny. Portions of the City ordinance are unconstitutional because they are so vague that persons "of common intelligence must necessarily guess at [their] meaning and differ as to [their] application," *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 70 L. Ed. 322, 46 S. Ct. 126 (1926), and are overbroad in that they "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama ex rel. Flowers,* 377 U.S. 288, 307, 12 L. Ed. 2d 325, 84 S. Ct. 1302 (1964). Also, several provisions in the licensing scheme embodied in the City ordinance improperly place "unbridled discretion" in the hands of City officials, constituting a prior restraint on protected speech lacking procedural safeguards to guard against potential censorship. *See City of Lake wood, 486 U.S. at 757.* In addition, the exemption for solicitation for religious purposes and certain related provisions violate the Establishment Clause.

(1) L.A.M.C. § 44.04. Notice of Intention.

Under Section 44.04, before soliciting charitable contributions, every person must file a Notice of Intention with the Department. The Notice of Intention shall include, "but not be limited to," certain specified information. The additional information the Department may require in its discretion, under section 44.02(d), is left unspecified. This section is thus void on its face for vagueness, and also impermissibly vests unbridled discretion in the licensing authority.

The Supreme Court has made clear that "in the First Amendment area 'government may regulate . . . only with narrow specificity.'" *Hynes,* 425 U.S. at 620 (quoting *NAACP v. Button,* 371 U.S. 415, 433, 9 L. Ed. 2d 405, 83 S. Ct. 328 (1963)). "The general test of vagueness applies with particular force in review of laws dealing with speech. 'Stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser.'" *Hynes,* 425 U.S. at 620 (quoting *Smith v. California,* 361 U.S. 147, 151, 4 L. Ed. 2d 205, 80 S. Ct. 215 (1959)). Thus, this provision must fall because individuals desiring to solicit charitable funds "'must necessarily guess at its meaning.'" *Hynes,* 425 U.S. at 620 (quoting Connally, 269 U.S. at 391). From reading the statute, it is impossible to discern with precision what information must be provided when filing a Notice of Intention with the Department. This vagueness renders section 44.04 facially invalid. Moreover, when read in conjunction with section 44.02(d), as it must be, it is plain that the licensing authority has unbridled discretion to determine "the specific information" that will be required to issue the Information Card necessary for soliciting charitable contributions under section 44.09.

Furthermore, certain of the specific disclosure requirements set forth in section 44.04 unduly burden the exercise of protected First Amendment rights without serving the City's stated purpose of preventing fraud. Although the government may legitimately require persons to register, identify their solicitors, and make disclosures concerning their solicitation of public funds, unduly burdensome disclosure requirements may run afoul of the First Amendment. *See City*

of Houston, 689 F.2d at 550-51; *see also Holy Spirit Ass'n,* 582 F. Supp. at 601. In *City of Houston,* the court stated that the disclosure requirements of the Houston ordinance were saved from constitutional invalidity because they did not compel charitable organizations "to decide whether to remain totally private or, by making public solicitations, reveal publicly all aspects of [their] internal operations." *City of Houston,* 689 F.2d at 556.

The disclosure requirements of the City ordinance are considerably broader and more intrusive than those at issue in *City of Houston.* Although most of section 44.04's disclosure requirements directly relate to the planned charitable solicitation, certain provisions paint with a much broader brush. Subsection (f) requires disclosure of a "detailed financial statement" for the most recent year, and subsection (g) demands the name, address, and telephone number of each officer and member of the applicant's board of directors or trustees. L.A.M.C. § 44.04(f), (g). Such disclosures directly expose the applicant's internal operations to public scrutiny and are unrelated to any legitimate governmental interest, including the City's stated interest in preventing fraudulent solicitations. "The potential chilling effect [of these disclosure requirements] on the exercise of [protected] First Amendment rights . . . is manifest, together with the invasion of privacy." *Holy Spirit Ass'n,* 582 F. Supp. at 601. And since it is left to the Department to condition issuance of the Information Card on any additional specific information it requests, L.A.M.C. § 44.02(d), the overbroad intrusion into First Amendment rights is all the more evident.

Thus, sections 44.04(f) and (g) are not narrowly drawn to serve the City's stated interests, and these provisions are unconstitutional on their face.

(2) L.A.M.C. § 44.05. Solicitation Agreement - Additional Information.

This section requires solicitors to file, with each Notice of Intention, a statement of any agreement made with any agent, solicitor, or professional fund-raiser. "Whenever in the judgment of the General Manager of the Department, the Notice of Intention . . . does not disclose for the public sufficient information" concerning such agreements, the Department may require that such additional information be provided upon request. L.A.M.C. § 44.05. The term "sufficient information" is vague and undefined. Thus, this provision again vests unbridled discretion in the hands of the licensing authority, provides no guidelines for the exercise of the General Manager's "judgment" that sufficient information to warrant issuance of an Information Card has been provided, and does not provide appropriate procedural safeguards. *See Freedman v. Maryland,* 380 U.S. 51, 58, 13 L. Ed. 2d 649, 85 S. Ct. 734 (1965). In particular, there are no time limits within which the General Manager must act. *See Fernandes v. Limmer,* 663 F.2d 619, 628 (5th Cir. Unit A Dec. 1981), *cert. dismissed,* 458 U.S. 1124 (1982).

Accordingly, section 44.05 is invalid on its face.

(3) L.A.M.C. § 44.09. Solicitation -- Information Card.

Section 44.09 prohibits the solicitation of charitable contributions without first obtaining an Information Card.

L.A.M.C. § 44.09(a). This provision does not violate the First Amendment on its face. *See Cantwell,* 310 U.S. at 306 (government may require solicitor to establish his identity and his authority to act for the cause which he purports); *Riley,* 487 U.S. at 799 n.11 (narrowly tailored requirement that fund-raiser disclose unambiguously his or her professional status would withstand First Amendment scrutiny). Constitutional problems arise only upon reference to the other requirements set forth in the City ordinance.

(4) L.A.M.C. § 44.02. Powers of the Department.

L.A.M.C. section 44.02 grants to the Department certain specified powers to regulate the solicitation of charitable contributions. Plaintiffs object to subsections (a) through (d), (e)(4), and (g) of this section.

(a) Subsections (a) through (c).

Subsections (a), (b), and (c) grant the Department broad investigative powers over financial statements filed with the City. Specifically, the Department is empowered to investigate statements on the Notice of Intention and the Report of Results of Activity, to have access to and inspect the books and records relating to any charitable solicitation of the persons by whom or on whose behalf such solicitation is made, and to investigate the method of making or conducting any such solicitation. L.A.M.C. § 44.02.

Significantly, subsections (a) through (c) require the disclosure and availability of information relating solely to the charitable solicitation for which the Information Card is

sought. The Supreme Court has recognized that "efforts to promote disclosure of the finances of charitable organizations. . . may assist in preventing fraud by informing the public of the ways in which their contributions will be employed." *Schaumburg,* 444 U.S. at 637-38. These subsections simply allow City officials to investigate the accuracy of the submitted information and to require potential solicitors making a specific charitable solicitation to make such information available for inspection. They are thus a narrowly tailored mechanism for serving the City's legitimate interests which does not unduly restrict First Amendment rights. As such, they are akin to the informational requirements that the Fifth Circuit upheld in *City of Houston,* 689 F.2d at 546. Therefore, subsections (a) through (c) are facially constitutional. *See Holy Spirit Ass'n,* 582 F. Supp. at 602.

(b) Subsection (d).

> Pursuant to subsection (d), the Department is empowered to:
>
> issue an Information Card no later than fifteen (15) days after receipt of a Notice of Intention; provided that where such notice is incomplete or otherwise fails to meet the requirements of Section 44.04 of this Article, the Department shall within ten (10) days after receipt of the notice notify the applicant in writing of the specific information needed to meet the requirements of Section 44.04.

L.A.M.C. § 44.02(d).

As already discussed, section 44.04 is facially invalid because it does not adequately specify the information that must be included in the Notice of Intention, and because it allows City officials to exercise unbridled discretion as to what information must be provided before an Information Card will issue. Because section 44.02(d) depends upon compliance with section 44.04, it, too, is invalid on its face.

Even if section 44.04's deficiencies were remedied, however, section 44.02(d) would not withstand constitutional attack. Although this subsection requires City officials to notify applicants of the specific information necessary to meet the requirements of section 44.04, it does not require City officials to issue an Information Card upon receipt of such additional information. Thus, section 44.02(d) apparently allows the City to indefinitely restrain protected First Amendment activity upon an initial determination that the Notice of Intention is incomplete. *See Fernandes,* 663 F.2d at 628.

(c) Subsection (e)(4).

Pursuant to subsection (e)(4), the Department is empowered to issue Information Cards which shall indicate, *inter alia,* "any additional information which in the opinion of the Department will be of assistance to the public in determining the nature and worthiness of the solicitation." L.A.M.C. § 44.02(e)(4). Again, this provision improperly places matters relating to the issuance of Information Cards in the sole and unfettered discretion of City officials. The ordinance is silent as to any procedural guidelines for the Department's requirement of additional information.

Even more inimical to the First Amendment freedoms at stake here is that when subsection (e)(4) is read with section 44.09, it is apparent that the City is engaged in the impermissible regulation of speech content. The two provisions mandate the inclusion on the Information Cards of City-selected speech that the Department views as "of assistance to the public in determining the nature and worthiness of the solicitation." Under section 44.09, charitable solicitors must exhibit the Information Card issued by the City to persons solicited before accepting any contributions. In a similar context, the Supreme Court has held that "mandating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley,* 487 U.S. at 795. In the context of charitable solicitations, such content-based regulation is subject to exacting First Amendment scrutiny. *Id.* at 798.

Presumably, the City's objective is to prevent fraudulent solicitations by compelling solicitors to convey the City defendants' opinion as to the "nature and worthiness" of the solicitation. Although this stated interest is undoubtedly substantial, the means chosen to accomplish it are insufficiently tailored to meet that interest and are thus unduly burdensome upon the exercise of First Amendment rights. *Riley,* 487 U.S. at 798. This provision plainly permits the Department to require disclosure of its own views concerning the "nature and worthiness" of the solicitation, even if it is not explicitly stated as such. Where the City's opinion of a particular cause is unfavorable, "the compelled disclosure will almost certainly hamper the legitimate efforts" of solicitors to obtain charitable contributions. *Riley,* 487 U.S. at 799. "In contrast to the prophylactic, imprecise, and unduly burdensome rule the [City] has adopted" to prevent fraudulent

solicitations, "more benign and narrowly tailored options are available. For example, . . . the [City] may itself publish the detailed financial disclosure forms" required to be filed, or, alternatively, the City could "vigorously enforce its antifraud laws" to achieve its stated purpose. *Id.* at 800. "These more narrowly tailored rules are in keeping with the First Amendment directive that government not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored." *Id.*

Subsection (e)(4) therefore fails constitutional scrutiny and is facially invalid.

(d) Subsection (g).

Subsection (g) empowers the Department to recall and declare void an Information Card "upon receipt of additional information by the Department which renders incorrect any statement set forth on the Information Card." L.A.M.C. § 44.02(g). Upon such recall or revocation, "the Department may amend or correct such statement and issue a new Information Card." L.A.M.C. § 44.02(g).

Because gaining relevant information as to the applicant is proper, the falsification of such information is not constitutionally privileged. *Fernandes,* 663 F.2d at 629. However, subsection (g) allows revocation for innocent mistakes as well as fraudulent representations. Moreover, the Information Card is created and issued by the Department, not the applicant. On its face, subsection (g) would allow revocation based on errors made by the Department, rather than the applicant. Subsection (g) also leaves the decisions whether to amend or correct a recalled Information Card and

whether to issue a new Information Card entirely to the City official's unbridled discretion without providing any procedural safeguards. Thus, subsection (g) is facially invalid.

(5) L.A.M.C. § 44.06. Accounting System.

This provision prohibits persons from soliciting charitable contributions unless a system of accounting is maintained "either on the cash or accrual basis, according to established and customary accounting principles." L.A.M.C. § 44.06. Contrary to Plaintiffs' assertion, this provision does not require that all persons desiring to solicit charitable contributions hire accountants and lawyers. Plaintiffs' Supp. Brief at 13. Rather, this section merely requires that solicitors maintain accurate and detailed books and records according to standard accounting practice. This requirement is reasonably calculated to make the Department's right to review financial records meaningful. *See supra* Part III.B.2.a(4)(a). *Holy Spirit Ass'n,* 582 F. Supp. at 603; *see also Schaumburg,* 444 U.S. at 637-38. Thus, this section is valid.

(6) L.A.M.C. § 44.14. Professional Fund-Raisers and Solicitors.

The City ordinance provisions regarding professional fund-raisers are constitutionally infirm.[15] Before issuing a professional fund-raiser license, the Department is required to

---

[15] "It is well settled that a speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak." *Riley,* 487 U.S. at 801. Thus, the City's licensing requirements for professional fund-raisers are not immune from First Amendment scrutiny.

verify that the applicant is of "good character." L.A.M.C. § 44.14(d)(1). This term is undefined and, apparently, a matter to be determined by the Department in its unlimited discretion. The standard is thus "indefinite and does not comport with the constitutional requirement that discretion in public officials be specifically and narrowly circumscribed." Fernandes, 663 F.2d at 631.

The provisions require that the applicant demonstrate "sufficient financial resources" to "successfully fulfill" its obligations. L.A.M.C. § 44.14(d)(2). The Department determines whether this amorphous standard has been met and may approve or deny a professional fund-raiser license based upon its discretionary finding. This provision is unconstitutionally vague and impermissibly vests unbridled discretion in the hands of the licensing authority.

Unlike other provisions of the City ordinance, section 44.14 does provide for certain procedural safeguards when the Department has determined that the vague standards of subsections (d)(1) and (2) are not met or concludes that the license shall be denied on the basis of failure to meet any of the other conditions set forth in section 44.14. The procedure set forth creates an avenue of appeal to the Board. L.A.M.C. §§ 44.14(f)(1)-(5). The Department must notify the applicant of the denial within fifteen days; the applicant has ten days within which to appeal. *Id.* The Board must schedule a hearing within thirty days of the notice of appeal and notify the applicant of its decision within five days after "completion of the hearing process." *Id.*

This procedure utterly fails to meet the "procedural safeguards designed to obviate the dangers of a censorship

system" set forth in *Freedman,* 380 U.S. at 58. *See Holy Spirit Ass'n,* 582 F. Supp. at 597. First, the ordinance does not expressly state who bears the burden of proof, and by requiring the applicant to appeal, it implicitly places the burden of going forward on the applicant. "The burden of proving . . . unprotected expression must rest on the censor." *Freedman,* 380 U.S. at 58. Second, there is no provision for a judicial proceeding even though the Board's notification of denial would constitute a final restraint. *Id.* However, the burden must be on the *censor* to "within a specified brief period, either issue a license or go to court to restrain" the speech. *Id.* at 58-59. Finally, "the procedure must also assure a prompt final judicial decision, to minimize the deterrent effect of an interim and possibly erroneous denial of a license." *Id. at 59.* The City ordinance plainly does not provide for a "prompt final judicial decision."[16] *See Fernandes,* 663 F.2d at 625 n.6.

Further, the requirements that professional fund-raisers pay a $55 fee and post a $5,000 bond directly restrain protected speech and are not narrowly tailored to meet the

---

[16] The application and appeals procedures set forth in the ordinance also fail to meet the "prompt" requirement. They would require the applicant to refrain from what may be constitutionally protected speech while pursuing the Board appeals process, which, at a minimum, could take fifty days. *Freedman,* 380 U.S. at 59; *see also Teitel Film Corp. v. Cusack,* 390 U.S. 139, 141, 88 S. Ct. 754, 19 L. Ed. 2d 966 (1968) (per curiam) (holding that a period of 50 to 57 days to complete an administrative permit process did not meet the constitutional standard requiring that the official either license, or go to court to restrain, film exhibition within a specified brief period).

substantial interest asserted by the City. L.A.M.C. § 44.14(c), (e). "Freedom of speech . . . [must be] available to all, not merely to those who can pay their own way." *Murdock v. Pennsylvania,* 319 U.S. 105, 111, 87 L. Ed. 1292, 63 S. Ct. 870 (1943). The courts have held that a "licensing fee to be used in defraying administrative costs is permissible, but only to the extent that the fees are necessary." *Fernandes,* 663 F.2d at 633 (citations omitted); *see also Holy Spirit Ass'n,* 582 F. Supp. at 604. Sections 44.14(c) and (e) impermissibly impose an exaction on the privilege of engaging in protected First Amendment activity, and the City defendants have not demonstrated a link between the fee and the bond and the costs of the licensing process. Consequently, section 44.14 is unconstitutional on its face.

(7) L.A.M.C. § 44.12. Additional Provisions.

The City ordinance exempts certain solicitations, including solicitations made "solely for evangelical, missionary or religious purposes." L.A.M.C. § 44.12. However, where any solicitation is made for evangelical, missionary, or religious purposes, but "in a manner which, in the opinion of the Department, is calculated to give, or may give, the impression . . . that the purpose of such solicitation is either in whole or in part charitable," the Department is authorized to investigate the matter and publicize its findings "as it deems best to advise the public of the facts of the case." *Id.* Plaintiffs assert that this provision violates the Establishment Clause of the First Amendment to the United States Constitution.

"The Establishment Clause was intended to afford protection [against] sponsorship, financial support, and active involvement of the sovereign in religious activity.'" *Lemon v.*

Kurtzman, 403 U.S. 602, 612, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971), (quoting *Walz v. Tax Comm'n,* 397 U.S. 664, 668, 25 L. Ed. 2d 697, 90 S. Ct. 1409 (1970)). The Court has developed three criteria for determining whether a statute survives an Establishment Clause challenge:

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; . . . finally, the statute must not foster "an excessive government entanglement with religion."

Lemon, 403 U.S. at 612-13 (citations omitted). The City ordinance fails each of these tests.[17]

First, the City defendants have failed to articulate a secular legislative purpose that would justify its preference for solicitations solely for evangelical, missionary, or religious purposes.[18] Second, by exclusively exempting solicitations for

---

[17] This Court rejects Plaintiffs' contention that section 44.12 constitutes a prior restraint on speech. If the Department finds that a particular solicitation is in whole or in part "charitable" its recourse is investigation and publicity -- not an act of censorship, but the creation of an avenue by which the City enters its own voice in the marketplace of ideas. Nor does the exemption allow City officials to exercise unbridled discretion in deciding whether a particular solicitation is in whole or in part "charitable." The terms "charitable" and "solicitation" are defined in the City ordinance, and Plaintiffs do not challenge these definitions for vagueness or overbreadth.

[18] Although the statute purports to exempt solicitations made for three distinct purposes, each of the exempted purposes is in fact

religious purposes, the ordinance impermissibly advances religion.[19] As the Supreme Court stated in *Texas Monthly, Inc. v. Bullock,* 489 U.S. 1, 8-9, 103 L. Ed. 2d 1, 109 S. Ct. 890 (1989):

> It is part of our settled jurisprudence that "the Establishment Clause prohibits government from

---

a religious one. "Evangelical" is defined as "1. of, relating to, or being in agreement with the Christian gospel esp. as it is presented in the four Gospels 2. Protestant." *Merriam Webster's Collegiate Dictionary* 401 (10th ed. 1993). The definition of "missionary" is "a person undertaking a mission and esp. a religious mission." *Id.* at 745. Statutes that confer benefits upon religious organizations have generally withstood constitutional attack only where "the benefits derived by religious organizations flowed to a large number of nonreligious groups as well." *Texas Monthly, Inc. v. Bullock,* 489 U.S. 1, 11, 103 L. Ed. 2d 1, 109 S. Ct. 890 (1989); *see also Walz,* 397 U.S. at 673; *Committee for Public Educ. & Religious Liberty v. Nyquist,* 413 U.S. 756, 793-94, 37 L. Ed. 2d 948, 93 S. Ct. 2955 (1973) (breadth of exemption for religious groups is unquestionably an "important factor" in assessing its constitutionality).

[19] Of course, government policies with secular objectives may incidentally benefit religion. *Texas Monthly,* 489 U.S. at 10; *see also Widmar v. Vincent,* 454 U.S. 263, 70 L. Ed. 2d 440, 102 S. Ct. 269 (1981) (state university that makes its facilities available for activities of registered student groups may not deny equal access to such a group desiring to use those facilities for religious worship or discussion); *Walz,* 397 U.S. 664, 25 L. Ed. 2d 697, 90 S. Ct. 1409 (upholding property tax exemption that applied to religious properties no less than to real estate owned by a wide array of nonprofit organizations, despite the sizable tax savings it accorded religious groups).

> abandoning secular purposes in order to put an imprimatur on one religion, or on religion as such, or to favor the adherents of any sect or religious organization." The core notion animating the requirement that a statute possess "a secular legislative purpose" and that "its principal or primary effect . . . be one that neither advances nor inhibits religion," is not only that government may not be overtly hostile to religion but also that it may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community.

Texas Monthly, 489 U.S. at 8-9 (citations omitted). Thus, the exemption provides unjustifiable assistance to religious solicitors and "cannot but 'convey a message of endorsement' to the slighted members of the community." *Texas Monthly,* 489 U.S. at 15.

Third, the ordinance creates excessive entanglement between church and state by requiring the Department to examine and monitor religious solicitations, to determine whether the solicitation "has been, is being or is intended to be" for religious purposes, to review the "manner" of the solicitation to determine the true purpose ("in the opinion of the Department" whether it appears "in whole or part charitable"), and, depending on its findings, take certain action. This government involvement in religious activity is excessive and is a "continuing one calling for official and

continuing surveillance leading to an impermissible degree of entanglement." Walz, 397 U.S. at 675.

Because this provision of the City ordinance "lacks a secular objective that would justify this preference [for religious purposes] along with similar benefits for nonreligious [communications], and because it effectively endorses religious belief," *Texas Monthly,* 489 U.S. at 17, and because it creates excessive governmental entanglement with religion, it does not withstand constitutional scrutiny.[20]

---

[20] The Court notes that the First Amendment does not necessarily preclude the City from investigating charitable solicitations and publishing the results of its investigation. The City's interest in preventing fraudulent solicitations is substantial, and publication of the results of the City's investigation would, ordinarily, constitute a benign and narrowly tailored means of achieving this end. *See Riley,* 487 U.S. at 800 (as a general rule, state may publish detailed financial disclosure forms to inform public about charitable solicitations); *cf. Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 9 L. Ed. 2d 584, 83 S. Ct. 631 (1963) (invalidating state commission's practice of notifying book distributors that certain designated books or magazines had been determined to be objectionable for sale to youths, thanking distributors in advance for their "cooperation," and reminding distributors of commission's duty to recommend prosecution of purveyors of obscenity). With respect to section 44.12, however, the invalidity of the exemption for religious solicitations renders the investigation and publication provisions likewise deficient.

b. The City Ordinance Is Not Narrowly Tailored To Serve the City's Substantial Interests In Preventing Fraud.

As discussed, certain portions of the City ordinance impose vague requirements on charitable solicitors, impermissibly burden protected speech, and vest the control of that speech in the hands of licensing officials with unfettered discretion to proscribe it, without providing adequate procedural safeguards. Because these provisions constitute a "direct restriction" on protected First Amendment activity, they cannot be sustained unless they are "intimately related" to the City's substantial governmental interests in preventing fraud and harassment of its citizens. *Schaumburg,* 444 U.S. at 636.

Although the City's interest in preventing fraud is substantial, the City ordinance is not narrowly tailored to this end. The City's legitimate interests may be better served by measures less intrusive than direct, discretionary prohibitions on charitable solicitation. *Schaumburg,* 444 U.S. at 636. "Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly. Efforts to promote disclosure of the [information relating to particular solicitors] also may assist in preventing fraud by informing the public of the ways in which their contributions will be employed." *Id.* at 637-38 (citations omitted). The ordinance at issue in *City of Houston* is one example of a less intrusive means by which the City might legitimately legislate in this area. *City of Houston,* 689 F.2d at 558-62. Although such measures may not be the most efficient means of preventing fraud, the Supreme Court has emphatically reaffirmed that "the First Amendment does not permit the State to sacrifice

speech for efficiency." *Riley,* 487 U.S. at 795. Therefore, certain provisions of the City Ordinance do not withstand constitutional scrutiny.

3. The County Ordinance Directly Restrains Protected First Amendment Activity and Is Not Narrowly Tailored To Prevent Fraud.

a. Certain Provisions of The County Ordinance Grant County Officials Broad Discretion To Restrain Protected First Amendment Activity.

Like the City defendants, the County defendants assert that the County ordinance is "vital to protect the citizens of Los Angeles from unscrupulous organizations and fraudulent schemes." County Brief at 6. According to the County defendants, the County ordinance merely requires that applicants submit sufficient information to "allow the public to make an informed decision on whether or not to donate to the solicitor's cause," and does not unduly intrude upon the rights of free speech. County Brief at 10.

The Court disagrees. As noted, charitable solicitations "involve a variety of speech interests" that are within the protection of the First Amendment, and therefore have not been dealt with as "purely commercial speech." *Schaumburg,* 444 U.S. at 632. Notwithstanding this distinction, certain portions of the County ordinance require all persons wishing to solicit charitable donations to obtain a business license and impose restrictions upon the granting of such a license identical to those applied in commercial contexts.

(1) L.A.C.C. § 7.24.030. Required.

Under this section, a person may not solicit charitable contributions unless such person first either obtains from the business license commission an information card, or possesses a city information card approved by the commission. L.A.C.C. § 7.24.030. Although Plaintiffs argue that this provision is unconstitutional, their position is without support. It is well established that when a person undertakes the collection of funds, a reasonable registration or identification requirement may be imposed. *Thomas v. Collins,* 323 U.S. 516, 540, 89 L. Ed. 430, 65 S. Ct. 315 (1945); *see also Cantwell,* 310 U.S. at 306. This requirement is valid on its face.

(2) L.A.C.C. § 7.24.040. Application - Contents and Filing.

Under this section, every person desiring an information card must file an application with the business license commission setting forth certain specified information. As discussed *supra* at Part III.B.2.a.(4).(a), disclosure requirements that specifically relate to the planned charitable solicitation are constitutional. *See City of Houston,* 689 F.2d at 556. However, disclosure requirements that have no bearing on the charitable solicitation impermissibly chill and intrude upon protected First Amendment rights. *See Holy Spirit Ass'n,* 582 F. Supp. at 601-2.

The requirement that applicants file a "specific statement of all contributions collected or received" within the calendar year preceding the date of such filing, including the "expenditures or use made of such contributions, together

with the names and addresses of all persons or associations receiving . . . compensation . . . from such contributions and the respective amounts thereof," is facially invalid. L.A.C.C. § 7.24.040.F. This requirement is unduly burdensome, unnecessarily compels applicants to disclose their internal operations, and fails to materially advance the County's substantial and legitimate interest in preventing fraudulent solicitations. *See Holy Spirit Ass'n,* 582 F. Supp. at 601-02.

Further, the requirements that the applicant disclose the names and addresses of its officers and directors and submit a copy of the applicant's resolution authorizing such solicitation are facially invalid. L.A.C.C. § 7.24.040.G., H. These requirements similarly chill the exercise of free speech rights by compelling publication of the applicant's private and internal operations and are not intimately related to the County's legitimate interest in preventing fraud. *See Holy Spirit Ass'n,* 582 F. Supp. at 601.

Accordingly, the Court concludes that subsections F, G, and H of section 7.24.040 are facially invalid.

(3) L.A.C.C. § 7.24.070. Application - Additional Information Required When.

This section provides that whenever, "in the opinion of the commission, the application does not disclose sufficient information for the public concerning the facts hereinabove required," then, "upon the request of the commission therefor, the applicant shall file, in writing, . . . such additional information as the commission may specifically require upon the foregoing subjects." L.A.C.C. § 7.24.070.

The term "sufficient information" is vague, and the determination whether this standard has been met is left to the commission's unfettered discretion. Therefore, section 7.24.070 is facially invalid.

(4) L.A.C.C. § 7.24.080. Application - Action By Commission.

This section provides that upon receipt of an application, "the business license commission may grant, deny or revoke a county information card, and may approve, disapprove or withdraw its approval of a city information card upon the same grounds and pursuant to the same procedures" as those applicable to other business licenses. L.A.C.C. § 7.24.080. Pursuant to L.A.C.C. §§ 7.08.10-7.08.280, business licenses may be denied or revoked for any number of reasons. For instance, L.A.C.C. § 7.08.080 provides that a license may be denied if the applicant "is unfit to be trusted with the privileges granted by such license, or has a bad moral character, intemperate habits, or a bad reputation for truth, honesty or integrity." L.A.C.C. § 7.08.080.C.[21] This provision is blatantly unconstitutional in that it leaves the denial of protected First Amendment rights to the unbridled discretion of the commission I and allows County officials to

---

[21] Although section 7.08.080 purportedly applies only to "Activities Not Involving Free Speech," it expressly excludes certain activities from its application but does not exclude the provisions relating to charitable solicitations. Under the familiar judicial maxim, *expressio unius est exclusio alterius,* the Court cannot, as the County defendants urge, read into the statute an exclusion for charitable solicitations when such exclusion was omitted by the legislative body.

restrain speech based on their value judgment about the speakers' character. As such, section 7.24.080 creates the potential for censorship and is facially invalid.

(5) L.A.C.C. § 7.24.120. Contents.

This section provides that the "information card also shall set forth so much of the pertinent facts stated in the application or disclosed by any additional information obtained by the commission as the commission finds will be of assistance to any person solicited for any contribution to enable such person to determine the nature and worthiness of the purpose for which such solicitation is made." L.A.C.C. § 7.24.120.

This provision is invalid for the same reasons as those portions of the City ordinance compelling solicitors to convey the opinion of governmental officials to persons solicited. *See* discussion *supra* at Part III.B.2.a.(4).c. "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech," and, in the context of charitable solicitations, such compelled statements of opinion are unduly burdensome and not narrowly tailored to serve the government's legitimate interests. *Riley,* 487 U.S. at 795. Therefore, like L.A.M.C. § 44.02(e)(4), this section is facially invalid.

(6) L.A.C.C. § 7.24.090. Denial of Approval - Grounds.

This section provides that the business license commission may deny or revoke a county information card, or may refuse to approve a city information card, if it finds that the

percentage of the contributions raised which will remain available for the specific purposes stated in the application is "unreasonably small" because of "inefficient operation, the payment of one or more salaries in amounts substantially greater than the reasonable value of the services performed, or for other similar reasons." L.A.C.C. § 7.24.090.

This section impermissibly conditions the exercise of First Amendment rights on business efficiency, improperly allows the commission to arbitrarily determine the "reasonable value" of services, and fails to adequately define "other similar reasons." Although this provision does not include a "fixed percentage limitation" on the costs of solicitation, it nonetheless imposes a cost-effectiveness requirement on all types of charitable organizations. "The realm of religious and charitable organizations . . . includes groups whose unorthodox messages will inevitably yield less cost-effective solicitation results." *Fernandes,* 663 F.2d at 631 (citing *Schaumburg,* 444 U.S. at 635-37). This provision also subjects charitable organizations to a complete financial audit. Such burdens on the free exercise of First Amendment rights cannot be justified. *Fernandes,* 663 F.2d at 631.

Therefore, this section is also invalid on its face.

(7) L.A.C.C. §§ 7.24.130 through 7.24.150.

Under these provisions, the business license commission is authorized to recall or revoke information cards upon receipt of information which, "in the opinion of the commission," renders any statement in the information card incorrect. L.A.C.C. § 7.24.130. Upon notification, the holder of the information card must return the card within 48 hours.

L.A.C.C. § 7.24.140. After recall, the commission "may amend or correct such information card or issue in lieu thereof a new information card" in accordance with the additional information received. L.A.C.C. § 7.24.150.

These sections are similar to L.A.M.C. § 44.02(g). *See* discussion *supra* Part III.B.2.a.(4)(d). As with that provision, section 7.24.130 is invalid because it allows County officials to deny the right to engage in protected speech based upon an innocent mistake, or based upon an error made by the County itself. Further, section 7.24.140 requires that the information card be returned without allowing the holder an opportunity to be heard, while section 7.24.150 allows the commission to amend or correct the information card but provides no time limits for the reissuance. *See Freedman,* 380 U.S. at 59.

Thus, these provisions are facially invalid.

(8) L.A.C.C. § 724.260. Return of Information Card.

This section requires that upon request by the commission, the holder of an information card shall return such information card "upon completion of the solicitation for which it was issued, or at the expiration of the period for which it is valid, whichever first occurs." L.A.C.C. § 7.24.260. This provision arbitrarily terminates solicitors' First Amendment rights upon expiration of a specified period, irrespective of whether they are continuing to engage in protected activity. Information card holders are given no opportunity to obtain an extension or to establish good cause to continue their solicitations. The absence of procedural safeguards renders this provision facially invalid. *See Freedman,* 380 U.S. at 59.

(9) L.A.C.C. § 7.24.180. Exceptions To Chapter Applicability.

This section provides that the County ordinance does not apply to certain solicitations, including solicitations made "solely for evangelical, missionary or religious purposes." L.A.C.C. § 7.24.180. The County defendants have not articulated any secular purpose for this exemption. Thus, like L.A.M.C. § 44.12, this section provides unjustifiable assistance to religious solicitors and "cannot but 'convey a message of endorsement' to slighted members of the community." *Texas Monthly,* 489 U.S. at 15 (citations omitted). *See* discussion *supra* Part III.B.2.a.(7). Because the exemption lacks a secular objective and because it effectively endorses religious activity, it fails constitutional scrutiny. *Texas Monthly,* 489 U.S. at 17.

(10) L.A.C.C. § 7.24.350. Investigation -- Solicitations for Evangelical, Missionary or Religious Purposes.

Under this section, where the commission discovers that any solicitation is made for evangelical, missionary, or religious purposes, "but in such manner as in the opinion of the commission is calculated to give or may give the impression" that its purpose is either in whole or in part charitable, then the commission, "if in its opinion the public interest will be subserved thereby," shall investigate the matter and publicize its findings. L.A.C.C. § 7.24.350. This section adds the evils of excessive governmental entanglement with religious activity to the exemption for charitable solicitations for religious purposes. Together, they render the

County ordinance in violation of the Establishment Clause. *See* discussion *supra* Part III.B.2.a.(7).

b. The County Ordinance Is Not Narrowly Tailored To Serve the County's Substantial Interests in Preventing Fraud.

Applying well-established First Amendment principles, the Court finds that the County ordinance is not narrowly tailored to achieve the County's principal asserted interest: the prevention of fraud. As with the City, the County may prevent fraudulent solicitations through any number of less restrictive alternatives. For example, the County is free to enforce its already existing fraud laws and to require charities to file financial disclosure reports. *See Schaumburg,* 444 U.S. at 637-38.

c. The Procedural Safeguards Contained in the County Ordinance Do Not Remedy Its Deficiencies.

The County defendants assert that even if the County ordinance restrains free speech, it should be found valid because of its numerous procedural safeguards. County Brief at 14. The County defendants point to provisions of the County ordinance that allow applicants to conduct solicitations pending review of their applications, and further allow applicants to appeal any adverse decisions. County Brief at 14.

This argument is not persuasive for two reasons. First, the opportunity to appeal the denial of a solicitation license does not remedy the deficiencies discussed above. Under the

County ordinance, County officials may exercise their discretion to restrain constitutionally protected activity. This imprecise and unduly burdensome discretionary standard renders certain provisions of the County ordinance invalid. On appeal before the commission, the applicant would be held to the same unconstitutional standard. "[A] law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 150-51, 22 L. Ed. 2d 162, 89 S. Ct. 935 (1969).

Second, the procedural safeguards contained in the County ordinance are not sufficient to satisfy First Amendment standards. In *Freedman,* 380 U.S. at 59, the Supreme Court held that prior restraints upon First Amendment rights avoid constitutional infirmity only where certain procedural requirements are present. As discussed *supra* at Part III.B.2.a.(6), these safeguards include the following: 1) "a requirement that the state initiate . . . and bear the burden of proof" in a judicial action to restrain the allegedly unprotected speech; 2) "an assurance that [speech] will not be delayed . . . while the state seeks protracted judicial review"; and 3) "a requirement that judicial review will be prompt." *Fernandes,* 663 F.2d at 625 n.6; *see also Freedman,* 380 U.S. at 59-60. Even a cursory review of the County ordinance reveals that it does not provide adequate procedural safeguards under Freedman.

Finally, the Court rejects the County defendants' claim that the County ordinance is not a "prior restraint." The County ordinance is plainly a licensing statute for charitable solicitations for which failure to comply subjects one to

criminal penalties. The Supreme Court has specifically stated that "a licensing statute placing unbridled discretion in the hands of a government official or agency *constitutes a prior restraint* and may result in censorship." *City of Lakewood,* 486 U.S. at 757 (emphasis added); *see also Lovell v. City of Griffin,* 303 U.S. 444, 451, 82 L. Ed. 949, 58 S. Ct. 666 (1938). And, as discussed *supra,* the County ordinance contains numerous provisions for revocation that fail to provide adequate procedural safeguards. *See* L.A.C.C. §§ 7.08.10 - 7.08.280; L.A.C.C. § 7.24.130. The "uncontrolled power of revocation . . . is but the converse of [a] system of prior licensing." *Jones v. City of Opelika,* 316 U.S. 584, 615 n. 5, 86 L. Ed. 1691, 62 S. Ct. 1231 (1942) (Douglas, J., dissenting), *majority opinion vacated,* 319 U.S. 103, 63 S. Ct. 890, 87 L. Ed. 1290 (1943); *see also Holy Spirit Ass'n,* 582 F. Supp. at 600; *Carlin Communications, Inc. v. Mountain States Telephone and Telegraph Co.,* 827 F.2d 1291, 1296 (9th Cir. 1987). Because the County ordinance grants County officials discretion to refuse to issue business licenses to solicitors of charitable contributions and further authorizes the unrestricted right of revocation of such licenses after they issue, it constitutes a prior restraint on protected First Amendment rights.

The County urges that the "temporary license" provisions of the ordinance remove it from the category of a prior restraint on speech, against which the heavy presumption of unconstitutionality applies. It is true that pursuant to section 7.06.060, upon receipt of a license fee, the tax collector-assessor must issue a dated receipt which constitutes a temporary license. L.A.C.C. §§ 7.06.050, 7.06.060. The temporary license expires:

> upon the final determination of the application or at the end of 60 days, whichever first occurs, except that if the tax collector finds . . . that at the end of 60 days the application has not finally been acted upon through no fault of the applicant and that expiration of the temporary license will cause unnecessary hardship to the applicant inconsistent with the purpose and intent of this title, or that the hardship to the applicant by the denial of an extension would be disproportionate to any benefit to the public, he may extend such temporary license for a period not to exceed 30 days.

L.A.C.C. § 7.06.060. Yet, by their own terms, the temporary license provisions cannot apply to charitable solicitations. First, the County itself contends that applicants desiring to solicit charitable funds are not required to pay a licensing fee. Therefore, they could not obtain a "dated receipt" under section 7.06.050, and would be ineligible for the temporary license.[22] Second, the ordinance provides that licenses for "fund-raising for charitable purposes" are "good for not more

---

[22] Although the County defendants assert that there is no fee required for charitable solicitors, the County ordinance's fee schedule contains conflicting provisions. The schedule states that there is no fee required for charitable solicitors but imposes a $2 fee on individuals wishing to engage in activities for "Charitable Purposes - not more than five days." L.A.C.C. § 7.14.010. Plaintiffs have not challenged the fee requirements of the County ordinance in this action. Nor have Plaintiffs raised the First Amendment or Equal Protection challenges that might arise from the disparate treatment by the County of protected speech, as to which the County imposes more burdensome restrictions in the form of a five-day limit on solicitation (if a license issues at all), and unprotected commercial activities.

than five days." L.A.C.C. § 7.06.160. This is plainly inconsistent with the issuance of a temporary license running for 60 days.

Even if the Court were to find that the temporary licensing provisions apply to charitable solicitations, which it expressly does not, it would still find the challenged provisions of the County ordinance to work an unconstitutional prior restraint on protected speech because they allow County officials to restrain charitable solicitations prior to their dissemination and prior to an adequate determination that the solicitation is fraudulent, and thus outside the protection of the First Amendment.[23] If, for example, an individual applies for an information card more than 60 days prior to the planned solicitation, the temporary license may expire before the date of the solicitation without a final determination having been rendered. Similarly, the County ordinance contains no assurance that a temporary license will not expire while a charitable solicitation is being conducted, thereby restraining appeals for charitable funds occurring after the date of expiration. The temporary license provisions clearly contemplate that solicitations may be restrained by authorizing County officials to extend the temporary license upon a showing of "unnecessary hardship" or "disproportionate"

---

[23] The Supreme Court has found that a restraint is "prior" when it may be imposed prior to a communication's dissemination, *see e.g., Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 559, 43 L. Ed. 2d 448, 95 S. Ct. 1239 (1975) or prior to "an adequate determination that [the expression] is not protected by the First Amendment." *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations,* 413 U.S. 376, 390, 37 L. Ed. 2d 669, 93 S. Ct. 2553 (1973)).

harm. L.A.C.C. § 7.06.060. Yet the statute fails to provide any guidelines for determining whether these conditions exist, and in any event, arbitrarily limits extensions to 30 days. Thus, although the temporary license provisions may postpone the imposition of a prior restraint on charitable solicitations, they do not eliminate the risk of censure.

IV. CONCLUSION

The City and County ordinances contain numerous constitutional failings, as described above, which render them in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, the Court grants partial summary judgment in favor of Plaintiffs as to their first and second causes of action.[24] The City and County defendants are hereby enjoined from enforcing those provisions of the City and County ordinances that are inconsistent with the First Amendment, as set forth in this Order.

---

[24] The Court rejects Plaintiffs' claims arising under the Religious Freedom Restoration Act. As discussed, "soliciting financial support is undoubtedly subject to reasonable regulation." *Schaumburg,* 444 U.S. at 632. Plaintiffs have made no showing that enforcement of the City and County ordinances would impose a "substantial burden" on their exercise of religion. *See* 42 U.S.C. § 2000bb-1; *see also Jolly v. Coughlin,* 76 F.3d 468, 477 (2d Cir. 1996) ("substantial burden exists where the state put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs'" (citations omitted).

IT IS SO ORDERED.

Dated: January 10, 1997

Kim McLane Wardlaw
United States District Judge

APPENDIX H

Los Angeles Municipal Code

Rev. No. 66 - 1997

Chapter IV - Public Welfare

Article 4 - Philanthropy

ARTICLE 4- PHILANTHROPY
(Amended In Entirety, Ord. No. 158,408, Eff. 11/20/83.)

SEC. 44.00. DEFINITIONS.

For the purposes of this article, the following words are defined and shall be construed as hereafter set forth unless it shall be apparent from the context that they have a different meaning:

(a) "**Board**" shall mean the Board of Social Service Commissioners.

(b) "**Charitable**" shall include philanthropic, social service, benevolent and patriotic, whether they are actual or purported.

(c) "**Contribution**" shall include food, clothing, money, property and the loan of money or property.

(d) "**Department**" shall mean the Police Department. (Amended by Ord. No. 171,262, Eft. 10/4/96.)

(e) "**Person**" shall be construed as defined in Section 11.01 of this Code.

(f) "**Professional Fund-Raiser**" shall mean any person who for pecuniary compensation or consideration received, or

to be received, solicits or is engaged in the business of, or holds himself or herself out to the public as engaged in the business of, soliciting charitable contributions for or on behalf of any other person, or conducts, manages or carries on, or agrees to conduct, manage or carry on, or is engaged in the business of, or holds himself or herself out as engaged in the business of, conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration, as used herein shall include, but shall not be limited to, participation on a percentage basis in any funds solicited or raised for or on behalf of any other person; provided, further, that no natural person who is a bona fide paid employee of a charitable organization endorsed by the Department shall be considered a professional fund-raiser within the meaning of this article.

(g) "**Solicitation**" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing posting or publishing of any handbill;

(3) The making of any announcement through the press, over radio or television, or by telephone, telegraph or billboard, concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, or offer to sell, any advertisement, advertising space, book, card, chance, coupon, device,

magazine, membership, merchandise, subscription, ticket or any other similar token, thing or device in connection with which any appeal is made for charitable purposes or when the name of any charity, philanthropy or charitable organization is used or referred to in such appeal as an inducement or reason for making such sale, or when or where in connection with such sale, a statement is made that the whole or any part of the proceeds from such sale will be donated to a charitable purpose or organization.

A solicitation, as defined herein, shall be deemed completed when made, whether or not the person making it receives a contribution or makes a sale referred to in this Article. No communication between natural persons personally known to each other shall constitute a solicitation, as defined herein.

SEC. 44.01. POWERS OF BOARD.

The Board shall have the following powers:

(a) To publish the results of any investigation provided for or authorized in Subsections (a), (b) and (c) of Section 44.02 of this article;

(b) To give such publicity to any such results by means as may be deemed best to reach the general public and persons interested, except in the ease of publicizing investigations of misstatements, deceptions and frauds;

(c) To schedule and conduct hearings and render decisions pursuant to denials and revocations of licenses and endorsements as provided for in Sections 44.14 and 44.15 of this article.

SEC. 44.02. POWERS AND DUTIES OF THE DEPARTMENT.
(Amended by Ord. No. 171,717, Eff. 10/16/97.)
(a) The Department shall have the following powers:

(1) To investigate statements on:

(1) the Notice of Intention and information submitted in connection therewith; and
(2) the Report of Results of Activity and information submitted in connection therewith;

(2) To have access to and inspect and make copies of all books, records and papers, relating to any solicitation and the distribution of any contribution received therefrom, of such person by whom or on whose behalf such solicitation is made;
(3) To investigate the method of making or conducting any such solicitation and. to give publicity to its findings in such a manner as the Department deems best to advise the public of the facts of such solicitation;
(4) To maintain a constant survey of the field of charities with regard to the need and the work being done in order to secure intelligent cooperation among all charities in the City so that a comprehensive and economical plan in philanthropy may be attained;
(5) To recall and declare void any Information Card upon receipt of additional information by the Department which renders incorrect any statement provided by the applicant which is set forth on such Information Card, provided the incorrect statement in question is not an innocent mistake. Upon recall, the Department shall issue a new Information Card pursuant to subsection 2(a) of this section. Upon request,

all recalled Information cards shall be returned to the Department within 48 hours;

(6) To encourage, through public education, publicity, and such other means of informing the public as the Department deems appropriate, support by the donating public in this City of those persons conducting charitable solicitations within its limits which are so organized that the maximum amount of net proceeds collected within the City is expended as authorized by, and under the direction of, a Los Angeles area governing body which exists for the purpose of administering, supervising or otherwise carrying on the solicitation and service activities of the person is such area.

(b) The Department shall have the following duties:

(1) The Department shall issue an Information Card no later than fifteen (15) days after receipt of a Notice of Intention which complies with the requirements of Section 44.04 of this article; provided that where such notice is incomplete or otherwise fails to meet the requirements of Section 44.04 of this article, the Department shall, within ten (10) days after receipt of the notice, notify the applicant in writing of the specific information needed to meet the requirements of Section 44.04 of this article. The Department shall issue an Information Card no later than fifteen (15) days after receipt of such additional information.

(2) The Department shall indicate on all Information Cards the following:

(i) That same is issued as information for the public and is not an endorsement; or

(ii) That same is an endorsement if (i) hereinabove is omitted and the Department endorses pursuant to Section 44.15 of this article;

(iii) The pertinent facts of the solicitation, including the commencement and termination dates.

SEC. 44.03. FRAUD.

No person shall perpetrate deception or fraud in connection with the solicitation of contributions for charitable purposes.

SEC. 44.04. NOTICE OF INTENTION.

(Amended by Ord. No. 171,717, Eff. 10/16/97.)

No person shall solicit and no person shall authorize another person to solicit any charitable contribution unless at least 15 days prior to the beginning of such solicitation there shall have been filed with the Department, on a form furnished by the Department, a written Notice of Intention to solicit charitable contributions. Said Notice shall include:

(a) The name of the person registering and desiring to solicit funds for charitable purposes;

(b) Whether the person registering is a natural person, partnership, corporation or association, and,

(1) If a natural person, the business or residence address and telephone number must be given;

(2) If a partnership, the names of all partners and the principal business or residence address and telephone number of each partner must be given;

(3) If a corporation, the person registering must state whether it is organized under the laws of

California or is a foreign corporation, and must show the mailing address, business location, telephone number, name of the individual in charge of the Los Angeles, or other local office of such Corporation, and the names of all officers and directors or trustees of said corporation, and, if a foreign corporation, the place of incorporation;

(4) If an association, the registration statement shall show the association's principal business address and telephone number, if any, and shall show names and principal business or residence addresses and telephone numbers of all members of the association unless they exceed ten (10) in number, in which case the application shall so state and the person registering may alternatively list the names and principal business or residence addresses and telephone numbers of the officers and directors or trustees of the association. If the association is part of a multi-state organization or association, the mailing address and business location of its local office;

(c) The purpose of the solicitation and use of the contributions to be solicited;

(d) The commencement and termination dates of the solicitation;

(e) A specific statement supported by reasons and if available, figures to enable the public to determine the need for the proposed solicitation

(f) The character of the solicitation and how it will be conducted;

(g) The estimated expenses of the solicitation in detail, including all salaries and underwritten expenses;

(h) The names of any officer, director, trustee, partner, or any current agent or employee engaging in solicitation of funds who has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven (7) years, and the nature of the offense, the State where the conviction occurred, and the year of such conviction;

(i) A statement signed under penalty of perjury that the signers of the Notice of Intention have read and are familiar with the provisions of this article and will require that all solicitors to be engaged in the solicitation read and be familiar with such provisions prior to making any solicitation.

SEC. 44.05. SOLICITATION AGREEMENT-ADDITIONAL INFORMATION.

There shall be filed with the Department with each Notice of Intention statement of any agreement made with any agent, solicitor, professional fund-raiser, manager or conductor of the solicitation, together with a true copy of each agreement which may be in writing. Within 48 hours after any change in any agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or written details thereof, if not in writing, shall be filed with the Department. (Third and Fourth Sentences Repealed by Ord. No. 171,717, Eff. 10/16/97.)

SEC. 44.06. ACCOUNTING SYSTEM.

No person shall solicit charitable contributions unless a system of accounting is maintained whereby all transactions are entered upon the books or records of the person, either on

the cash or accrual basis, according to established and customary accounting principles.

SEC. 44.07. COIN CONTAINERS.

No person shall solicit any contributions utilizing coin containers or receptacles without displaying an Information Card or an authentic reproduction thereof.

SEC. 44.08. SOLICITATIONS ON BEHALF OF OTHER PERSONS.

No person shall conduct a solicitation on behalf of another person unless written authorization of the latter person granting permission for the specified solicitation is provided to the Department.

SEC. 44.09. SOLICITATION- INFORMATION CARD.

(a) No person shall solicit any charitable contributions unless an Information Card, or an authentic reproduction thereof, provided for in Section 44.02 of this article, is given or exhibited to the person solicited before accepting any contribution. The original Information Card shall be conspicuously displayed at the site of special events conducted for the purpose of obtaining funds for charitable purposes.

(b) No person shall solicit any charitable contributions by printed matter or published article, or over the radio, television, telephone or telegraph, unless such publicity shall contain the data and information required to be set forth on the Information Card; provided, that when any solicitation is made by telephone, the solicitor shall disclose to each person solicited the data and information required to be set forth on the Information Card and shall present to each person who consents, or indicates a willingness to contribute, prior to

accepting a contribution from said person, such Information Card or an authentic reproduction thereof.

SEC. 44.10. REPORT OF RESULTS OF ACTIVITY.

Every person soliciting charitable contributions shall file with the Department within 30 days after the termination date of the solicitation a Report of Results of Activity. The Report shall detail all receipts, expenses and distributions of proceeds. Such Report shall be made on a form provided by the Department and signed by two officers, if practicable, or other duly authorized natural persons.

It shall be unlawful to expend charitable funds raised by public solicitation for any purpose other than those specified on the Information Card, except that where no purpose specified on the Information Card any longer exists, the person may expend such funds for a similar purpose.

SEC. 44.11. RECEIPTS FOR CONTRIBUTIONS.

A receipt for the amount donated shall be given to each contributor requesting one. Each receipt shall be signed by the solicitor and shall identify the person on whose behalf the contribution was received.

SEC. 44.12. EXEMPTIONS.

(Amended by Ord. No. 171,717, Eff. 10/16/97.)

The provisions of this article, except Sections 44.00 and 44.03. shall not be applicable to any solicitation made upon premises owned or occupied by the person upon whose behalf such solicitation is made nor to any solicitation for the relief of any natural person specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall

be turned over to the named beneficiary nor to any organization soliciting contributions solely from members thereof at the time of such solicitation.

SEC. 44.13. HOURS OF SOLICITATION.

(a) No person shall solicit any charitable contribution door-to-door between the hours of 8:00 p.m. and 8:00 a.m.

(b) No child under the age of 10 years shall solicit any charitable contribution unless accompanied by a responsible person who is 18 years of age or older and who shall at all times keep such child within the range of his or her sight and hearing.

(c) No child under the age of 16 years shall solicit any charitable contributions between the time of sunset and 9:00 a.m.

SEC. 44.14. PROFESSIONAL FUND- RAISERS AND SOLICITORS.

(a) **Professional Fund-Raisers**.

No professional fund-raiser shall solicit charitable contributions for any actual or purported charitable purpose without a license issued by the Department. A licensed professional fund-raiser shall not solicit charitable contributions for any person without first notifying the Department. It shall be the responsibility of each licensed professional fund-raiser to notify the Department in writing of all contracts and working agreements with each charitable organization with which the professional fund-raiser is associated.

(b) **Application**. Applicants shall file for a professional fund-raiser's license on forms furnished by the Department.

(c) (Repealed by Ord. No. 171,717, Eff. 10/16/97.)

(d) **Investigation**. (Amended by Ord. No. 171,717, Eff. 10/16/97.) The Department shall investigate the applicant and verify:

(1) The applicant has not been convicted of a felony or a misdemeanor involving moral turpitude within the past seven (7) years.

(2) That all statements in the application are true.

(e) **Bond**.

(1) At the time of filing an application for a professional fund-raiser's license the applicant shall file with the Department satisfactory proof of the existence of a good and sufficient surety bond or bonds, in the aggregate sum of not less than $5,000.00, running to each person for whom the applicant proposes to solicit. Such bond or bonds shall be issued by a surety company authorized to do business in the State of California and shall provide for the reimbursement for direct loss of money or property sustained through any dishonest or criminal act on the part of the applicant.

(2) Such bond or bonds or a substitute or substitutes therefor shall remain in force and effect for the entire period of the professional fund-raisers license.

(3) Upon any recovery on any such bond by reason of any act of a professional fund-raiser, the Department shall forthwith suspend such professional fund-raiser's license.

(f) **Issuance**.

The Department shall issue to the applicant a license to solicit as a professional fund-raiser when all of the foregoing conditions are met. If all the foregoing conditions have not

been met, the Department shall deny a license to the applicant, subject to the following conditions:

(1) The Department shall notify the applicant in writing, no later than 15 days after receipt of the complete application of the reasons for denial of a license;

(2) The applicant may appeal the denial of a license by written request filed with the Board within 10 days after notification of the denial;

(3) The Board shall schedule a hearing within 30 days after receipt of the request for appeal and shall send notice of the time and place of the hearing to the applicant by certified mail no later than 10 days prior to the date set for the hearing;

(4) The applicant and the Department may submit evidence relative to their respective positions in writing prior to the hearing or in writing or orally at the hearing and the burden of proof at such heating shall be upon the Department; and (Amended by Ord. No. 171,717, Eff. 10/16/97.)

(5) The hearing shall be held before the Board, which shall notify the applicant in writing of its decision within five (5) days after completion of the hearing process. The Department shall immediately issue the license upon a finding by the Board that the Department has failed to sustain its burden of proof at such hearing. The Department shall not issue a license upon a. finding by the Board that the Department has met its burden of proof at such hearing. Upon a denial of a license, the Department may seek an injunction to prohibit any act in violation of this section. (Amended by Ord. No. 171,717, Eff. 10/16/97.)

(g) **Revocation**.

A professional fund-raiser's license may be revoked if the Department finds that any act or omission of such professional fund-raiser or his or her agents or employees in making any solicitation or in the conduct of the business of a professional fund-raiser is illegal or fraudulent. The Department must revoke a professional fund-raiser's license if it finds the existence of any grounds upon which the issuance of such license would be denied under this section. No revocation of a professional fund-raiser's license shall be effective except upon notice and an opportunity to be heard as provided in Subsection (f) of this section.

(h) **Expiration**.

Each professional fund-raiser's license shall expire 12 months after Issuance.

(i) **Funds**.

A professional fund-raiser shall not commingle charitable contributions with his or her funds or property.

(j) **Solicitors**.

(1) It shall be unlawful for any professional fund-raiser to cause permit any person for compensation to solicit or receive any charitable contribution unless such person shall be licensed as a solicitor by the Department. Each solicitor shall be under the direction and control of licensed professional fund-raiser.

(2) Except as provided in Subsections (a) through (i) of this section, no person shall for compensation solicit charitable contributions for or behalf of any other person unless such former person is first licensed by the Department.

(3) A fee of $18.00, payable to the Department, shall accompany each application for a solicitor's license. Each initial application shall be accompanied by the applicant's photograph and fingerprints, on form prescribed by the Department, and by a fingerprint processing fee payable to the Department. The Department is authorized to adjust th amount of the its fee for the processing of fingerprints so that it shall be equal in amount to the State of California fee to the City of Los Angeles for the processing of fingerprints. (Second and Third Sentences Amended by Ord. No. 171,262, Eff. 10/4/96.) The fingerprint processing fee shall not exceed the amount charged to the City by the State. (Amended by Ord. No. 162,141, Eff. 5/10/87.)

(4) No solicitor's license shall be issued unless the applicant files with the Department satisfactory proof of the existence of a good and sufficient surety bond or bonds, in the sum of not less than $1,000.00 each running to each person for whom the applicant proposes to solicit. Such bond or bonds shall be issued by a surety company authorized to do business in the State of California and shall provide for the reimbursement for direct loss of money or property sustained through any dishonest or criminal act on the part of the applicant. Such bond or bonds or a substitute or substitutes therefor shall remain in force and effect for the entire period of the solicitor's license. Upon any recovery on any such bond by reason of any act of a solicitor, the Department shall forthwith suspend such solicitor's license.

(5) A solicitor's license shall be issued upon verification by the Department of the good character of the

applicant and that the applicant has not been convicted of a misdemeanor or felony.

(6) A solicitor must notify the Department in writing of any change of addresses and of any termination or change of employment.

(7) A solicitor's license may be revoked if the Department finds that any act or omission of such solicitor in making any solicitation is illegal or fraudulent. The Department must revoke a solicitor's license if it finds the existence of any grounds upon which the issuance of such license would be denied under this subsection. No revocation of a solicitor's license shall be effective except upon notice and an opportunity to be heard as provided in Subsection (f) of this section.

(8) Each solicitor's license shall expire 12 months after issuance.

SEC. 44.15. ENDORSEMENT.

The Department shall have the power;

(a) To endorse, upon request, those charitable organizations which submit to investigation and meet the following requirements:

(l) That a direct service program is provided to the community by the organization;

(2) That the work for which such organization was created has been performed;

(3) That a board of directors or trustees exercises full control and direction of the organization;

(4) That the members of the board of directors or trustees are not compensated for their services;

(5) That the compensated administrative head of the organization is not a member of the board of directors or trustees;

(6) That no monies of the organization are on loan directly or indirectly to any officer, director, trustee or employee thereof;

(7) That the organization has not paid out more than 20 percent of any amount collected by solicitation for expenses of solicitation and has not diverted funds donated to it from any source to purposes other than those for which they were donated;

(8) That for the period of one year prior to the endorsement the organization has kept its records in accordance with generally accepted accounting principles and standards for non-profit organizations;

(9) That for the period of one year prior to the endorsement the organization has not violated any law applicable to it. The Department shall issue said endorsement to any organization that complies with the aforementioned requirements. An endorsement shall be valid for one year from the date of its issuance or most recent renewal. Renewal of an endorsement may be granted upon the same conditions as an original endorsement may be issued;

(b) To refuse to endorse or revoke endorsement of an organization that does not comply with the requirements of Subsection (a) of this section, subject to the following procedure:

(1) The Department shall notify the organization in writing of the reasons for denial or revocation of endorsement.

(2) The organization may appeal the denial or revocation of endorsement by written request filed with the Board within 10 days after notification of the denial or revocation. If an appeal is filed, the Department shall withhold making a final decision until the report of the Board has been received. If an appeal is not filed within the prescribed time limit, the decision to deny or revoke endorsement shall be final.

(3) The Board shall schedule a hearing within 30 days after receipt the appeal and shall send notice of the time and place of the hearing to the organization by certified mail no later than 10 days prior to the date set for the hearing.

(4) The organization and the Department may submit evidence relative to their respective positions in writing prior to the hearing or in writing or orally at the hearing.

(5) The hearing shall be held before the Board which shall notify the Department of its findings within 5 days after completion of the hearing process.

(6) The Department shall consider the findings of the Board before making its final decision.

(7) The Department shall notify the organization of its decision within 10 days after receipt of the Board's findings;

(c) To convene on no less than an annual basis representatives of endorsed organizations to secure cooperation among charities in the City to the end that a

comprehensive and economical plan in philanthropy is promoted;

(d) To waive the provisions of Subsections (a) through (h) of Section 44.14 of this article for any bona fide paid employee of an endorsed organization:

(e) To provide advice, counsel and training opportunities to all charitable organizations in the City on the methods and procedures that lead to or help maintain endorsement.

APPENDIX I

PRE-1997
CHARITABLE SOLICITATIONS ORDINANCE

PROCEDURES

Before: AT LEAST 15 days before the start of a fund-raising campaign or special event, you must complete and file a "notice of Intention" with the Social Service Department. The Notice, completed and supported by various other documents as specified, including articles of incorporation, bylaws, and tax exemption letters, must be delivered or mailed to Room 1501, City Hall, Los Angeles 90012. If you have any questions regarding the Notice, call (213) 485-5003 and ask to speak with an investigator. After investigation by the Department, an Information Card is issued. The Information Card, which is not an endorsement, contains important facts to be considered by a prospective donor in determining the desirability of making a contribution. No solicitation shall be started until an Information Card has been issued.

During: Each solicitor must give or exhibit a copy of the Information Card to all persons solicited, allowing the prospective donor time to read its contents. In mail appeals, a copy of the Information Card must be enclosed with each appeal. The original

Information Card must be displayed conspicuously at the site of special events.

After: A REPORT OF RESULTS OF ACTIVITY showing receipts, expenditures, and distribution of net proceeds must be filed within 30 days of the termination of the fund-raising campaign or within 30 days after the special event.

Expenditure of funds for reasons other than those specified on the Information Card is illegal.

Professional Fund-Raisers and Paid Solicitors

An individual, other than a bona fide paid employee of a charitable organization endorsed by the Social Service Department, who receives pecuniary compensation or consideration to raise funds for a charitable purpose, is required to apply for and obtain a PROFESSIONAL FUND-RAISER'S LICENSE from the Social Service Department for an annual fee of $55, and furnish satisfactory proof of the existence of a $5,000 surety bond running to each person for whom the applicant proposes to solicit.

A PAID SOLICITOR must apply for and obtain a SOLICITOR'S LICENSE from the Social Service Department. An annual fee of $18 must accompany each application. Each initial application must also be accompanied by the applicant's photograph and fingerprints, and by a fingerprint processing fee of $18. Further, applicants must file satisfactory proof of the existence of a $1,000 surety bond running to each person for whom the applicant proposes to solicit.

STANDARDS
of the Social Service Department

1. Fund-Raising Costs

Fund-raising costs shall not exceed twenty (20) percent of total receipts.

Note: Fund-raising costs for a special event such as a dinner and fashion show may exceed 20 percent, but in no case should they exceed 50 percent. Further, all fund-raising activities of the organization should be conducted so that total fund-raising costs for the budget period do not exceed 20 percent.

2. General Administration and Management Costs

General administration and management costs not allocable to a charitable program or activity should not exceed 10 percent of total receipts accumulated during the budget period.

3. Publicly Supported Program Services

The charitable organization receiving public contributions shall use those contributions in the program(s) that (1) benefits the public, (2) for which the public donated funds, and (3) for which the organization holds tax-exempt status.

4. Program management

A charitable organization shall be under the full control of a board of directors or trustees.

5. Financial Interest of Officers

A. No member of the board of directors or trustees may be compensated for services rendered.

B. The compensated administrative head of the charitable organization may not serve as a director or trustee.

C. No monies of the organization are on loan, directly or indirectly, to any of the organization's officers, directors, or employees.

6. Accounting Records

All financial records shall be kept in accordance with generally accepted principles and standards for nonprofit organizations.

7. Applicable Laws

The organization may not violate any law that could be directly related to (A) charitable solicitations or (B) expenditures of solicited funds.

8. Children

No child under age 10 shall solicit unless accompanied by a responsible person age 18 or older who shall at all times keep such child within seeing and hearing range. No child under 16 years of age may solicit charitable contributions between the hours of sunset and 9 a.m.

*9. **Missing text***

There shall be no door-to-door charitable solicitations between 8 p.m. and 8 a.m.

10. Unordered Merchandise

Unordered merchandise is not to be mailed or sent with a charitable appeal.

11. Method of Solicitation

Any oral or written charitable solicitation must include, as an integral part of the solicitation, a copy of the Information Card. If the solicitation is by newspaper, billboard, telegraph, television, radio, or telephone, the solicitation must include the data and information set forth on the Information Card.

Telephonic solicitations must include the data and information set forth on the Information Card. Additionally, the person who consents or is willing to make a contribution based on a telephonic solicitation must be given an authentic copy of the Information Card before making a donation.

12. Reproduction of Information Card.

Only authentic reproductions of the Information Card shall be made by an organization. Any change in the Information Card is illegal unless made by the Social Service Department, Reproduction of the Information Card must be (1) clearly legible, (2) not smaller than 3 ½" by 5", and (3) generally in accordance with the sample shown below.

Pre-1997 Charitable Solicitations Ordinance

FOLD-OUT EXHIBIT

SOCIAL SERVICE DEPARTMENT
SAMPLE INFORMATION CARD

There shall be no door-to-door charitable solicitations between 8 p.m. and 9 a.m.

10. Unordered Merchandise

Unordered merchandise is not to be mailed or sent with a charitable appeal.

11. Method of Solicitation

Any oral or written charitable solicitation must include, as an integral part of the solicitation, a copy of the Information Card. If the solicitation is by newspaper, billboard, telegraph, television, radio, or telephone, the solicitation must include the data and information set forth on the Information Card.

Telephonic solicitations must include the data and information set forth on the Information Card. Additionally, the person who consents or is willing to make a contribution based on a telephonic solicitation must be given an authentic copy of the Information Card before making a donation.

12. Reproduction of Information Card

Only authentic reproductions of the Information Card shall be made by an organization. Any change in the Information Card is illegal unless made by the Social Service Department. Reproduction of the Information Card must be (1) clearly legible, (2) not smaller than 3 1/2" by 5", and (3) generally in accordance with the sample shown below.

SOCIAL SERVICE DEPARTMENT
City of Los Angeles

INFORMATION CARD

HANDICAPPED CHILDREN'S RECREATION, HEALTH, AND WELFARE ASSOCIATION OF LOS ANGELES
828 Charity Avenue, Los Angeles, CA 90091
(213) 657-9123

Will conduct its Annual Appeal to November 22, 19XY.

Local program services include grants to local handicapped children clinics, social casework, medical equipment, and other services to Association's patients.

19XX Fiscal Operations were:

REVENUE		EXPENDITURES	
TOTAL SUPPORT FROM THE PUBLIC (Contributions and bequests)	$722,145	PROGRAM SERVICES	$179,651
		PAYMENTS TO AFFILIATES	419,016
		MANAGEMENT AND GENERAL	48,122
OTHER INCOME	6,731	FUND-RAISING (8.5%)	61,434
	$728,876		$708,223

Pat Smith, Board Member, is volunteer chairperson. Chris Jones, Campaign Director, has secured license pursuant to Ordinance.

SOLICITATION RESTRICTED TO THE HOURS OF 8 A.M. – 8 P.M.

AN EQUAL EMPLOYMENT OPPORTUNITY—AFFIRMATIVE ACTION EMPLOYER

BEST AVAILABLE COPY

THE CHARITABLE SOLICITATION ORDINANCE LOS ANGELES MUNICIPAL CODE

CHAPTER IV

ARTICLE 4 - PHILANTHROPY

SEC. 44.00. DEFINITIONS:

For the purpose of this Article, the following words are defined and shall be construed as after set forth unless it shall be apparent from the context that they have a different meaning:

(a) "Board" shall mean the Board of Social Service Commissioners.

(b) "Charitable" shall include philanthropic, social service, benevolent and patriotic, whether they are actual or purported.

(c) "Contribution" shall include food, clothing, money, property and the loan of money or property.

(d) "Department" shall mean the Social Service Department.

(e) "Person" shall be construed as defined in Section 11.01 of this Code.

(f) "Professional Fund-Raiser" shall mean any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of, or

holds himself or herself out to the public as engaged in the business of, soliciting charitable contributions for or on behalf of any other person, or conducts, manages or carries on , or agrees to conduct, manage or carry on, or is engaged in the business of, or holds himself or herself out as engaged in the business of, conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration, as used herein shall include, but shall not be limited to, participation on a percentage basis in any funds solicited or raised for or on behalf of any other person; provided, further, that no natural person who is a bona fide paid employee of a charitable organization endorsed by the Department shall be considered a professional fund-raiser within the meaning of this Article.

(g) "Solicitation" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill;

(3) The making of any announcement through the press, over radio or television, or by telephone, telegraph or billboard, concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, or offer to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or any other similar token, thing or device in connection with which any appeal is made for charitable purposes or when the name of any charity, philanthropy or charitable organization is used or referred to in such appeal as an inducement or reason for making such sale, or when or where in connection with such sale, a statement is made that the whole or any part of the proceeds from such sale will be donated to a charitable purpose or organization.

A solicitation, as defined herein, shall be deemed completed when made, whether or not the person making it receives a contribution or makes a sale referred to in this Article. No communication between natural persons personally known to each other shall constitute a solicitation, as defined herein.

SEC. 44.01. POWERS OF BOARD:

The Board shall have the following powers:

(a) To publish the results of any investigation provided for or authorized in subsections (a), (b) and (c) of Section 44.02 of this Article;

(b) To give such publicity to any such results by means as may be deemed best to reach the general public and persons interested, except in the case of publicizing investigations of misstatements, deceptions and frauds;

(c) To schedule and conduct hearings and render decisions pursuant to denials and revocations of licenses and

endorsements as provided for Sections 44.14 and 44.15 of the Article.

SEC. 44.02. POWERS OF DEPARTMENT:

The Department shall have the following powers:

(a) To investigate statements on : (1) the Notice of Intention and information submitted in connection therewith; and (2) the Report of Results of Activity and information submitted in connection therewith;

(b) To have access to and inspect and make copies of all books, records and papers, relating to any solicitation and the distribution of any contribution received therefrom, of such person by whom or on whose behalf such solicitation is made;

(c) To investigate the method of making or conducting any such solicitation;

(d) To issue an Information Card no later than fifteen (15) days after receipt of a Notice of Intention; provided that where such notice is incomplete or otherwise fails to meet the requirements of Section 44.04 of this Article, the Department shall within ten (10) days after receipt of the notice notify the applicant in writing of the specific information needed to meet the requirements of Section 44.04.

(e) To issue Information Cards to persons meeting the requirements of this Article which shall indicate:

(1) That same is issued as information for the public and is not an endorsement; or

(2) That same is an endorsement if (1) hereinabove is omitted and the Department endorses pursuant to Section 44.15 of this Article;

(3) The pertinent facts of the solicitation, including the commencement and termination dates;

(4) Any additional information which in the opinion of the Department will be of assistance to the public in determining the nature and worthiness of the solicitation;

(f) To maintain a constant survey of the field of charities with regard to the need and the work being done in order to secure intelligent cooperation among all charities in the City so that a comprehensive and economical plan in philanthropy may be attained;

(g) To recall and declare void any Information Card upon receipt of additional information by the Department which renders incorrect any statement set forth on such Information Card. The Department may amend or correct such statement and issue a new Information Card. Upon request; all Information Cards shall be returned to the Department within 48 hours;

(h) To encourage, through public education, publicity, and such other means of informing the public as the Department deems appropriate support by the donating public in this City of those persons conducting charitable solicitations within its limits which are so organized that the maximum amount of the net proceeds collected within the City is expended as authorized by, and under the direction of, a Los Angeles area governing body which exists for the purpose of administering,

supervising or otherwise carrying on the solicitation and service activities of the person in such area.

SEC. 44.03. FRAUD:

No person shall perpetrate deception or fraud in connection with the solicitation of contributions for charitable purposes.

SEC. 44.04. NOTICE OF INTENTION:

No person shall solicit and no person shall authorize another person to solicit any charitable contribution unless at least 15 days prior to the beginning of such solicitation there shall have been filed with the Department, on a form furnished by the Department, a written Notice of Intention to solicit charitable contributions. Said Notice shall include, but not be limited to:

(a) The purpose of the solicitation and use of the contributions to be solicited;

(b) The commencement and termination dates of the solicitation;

(c) A specific statement supported by reasons and, if available, figures to enable the public to determine the need for the proposed solicitation;

(d) The character of the solicitation and how it will be conducted;

(e) The estimated expenses of the solicitation in detail, including all salaries and any underwritten expenses;

(f) A detailed financial statement for the most recently completed calendar or fiscal year if such statement has not been previously filed with the Department;

(g) The name, address, telephone number and title of each officer and member of the board of directors or trustees of the person;

(h) A statement that the signers of the Notice of Intention have read and are familiar with the provisions of this Article and will require that all solicitors to be engaged in the solicitation read and be familiar with such provisions prior to making any solicitation.

SEC. 44.05 SOLICITATION AGREEMENT - ADDITIONAL INFORMATION

There shall be filed with the Department with each Notice of Intention a statement of any agreement made with any agent, solicitor, professional fund-raiser, manager or conductor of the solicitation, together with a true copy of each agreement which may be in writing. Within 48 hours after any change in any agreement or the making of any of any new or further agreement, a true copy of such change or agreement if in writing or written details thereof, if not in writing, shall be filed with the department. Whenever, in the judgement of the General Manager of the Department, the Notice of Intention filed with the Department does not disclose for the public sufficient information concerning the facts required to be stated therein or concerning the person proposing to make

the solicitation or on whose behalf the solicitation is to be made, upon request, such additional information that may be required by the Department shall be filed in writing within 48 hours. The Department for good cause may extend the time for filing such additional information.

SEC. 44.06 ACCOUNTING SYSTEM:

No person shall solicit charitable contributions unless a system of accounting is maintained whereby all transactions are entered upon the books or records of the person, either on the cash or accrual basis, according to established and customary accounting principles.

SEC. 44.07 COIN CONTAINERS:

No person shall solicit any contributions utilizing coin containers or receptacles without displaying an Information Card or authentic reproduction thereof:

SEC. 44.08 SOLICITATIONS ON BEHALF OF OTHER PERSONS:

No Person shall conduct a solicitation on behalf of another person unless written authorization of the latter person granting permission for the specified solicitation is provided to the Department.

SEC. 44.09 SOLICITATION - INFORMATION CARD

(a) No person shall solicit any charitable contributions unless an Information Card, or an authentic reproduction thereof, provided for in Section 44.02 of this Article, is

given or exhibited to the person solicited before accepting any contribution. The original Information Card shall be conspicuously displayed at the site of special events conducted for the purpose of obtaining funds for charitable purposes.

(b) No person shall solicit any charitable contributions by printed matter or published article, or over the radio, television, telephone, or telegraph unless such publicity shall contain the data and information required to be set forth on the Information Card; provided, that when any solicitation is made by telephone, the solicitor shall disclose to each person solicited the data and information required to be set forth on the Information Card and shall present to each person who consents, or indicates a willingness to contribute, prior to accepting a contribution from said person, such Information Card or authentic reproduction thereof.

SEC. 44.10 REPORT OF RESULTS OF ACTIVITY:

Every person soliciting charitable contributions shall file with the Department within 30 days after the termination date of the solicitation a Report of Results of Activity. The report shall detail all receipts, expenses and distributions of proceeds. Such Report shall detail all receipts, expenses and distribution of proceeds. Such report shall be made on a form provided by the Department and signed by two officers, if practicable, or other duly authorized natural persons.

It shall be unlawful to expend charitable funds raised by public solicitation for any purpose other than those specified on the Information Card, except that where no purpose

specified on the Information Card any longer exists, the person may expend such funds for a similar purpose.

SEC. 44.11 RECEIPTS FOR CONTRIBUTIONS

A receipt for the amount donated shall be given to each contributor requesting one. Each receipt shall be signed by the solicitor and shall identify the person on whose behalf the contribution was received.

C. 44.12 ADDITIONAL PROVISIONS

The provisions of the Article, except Sections 44.00 and 44.03, shall not be applicable to any solicitation made upon premises owned or occupied by the person upon whose behalf such solicitation is made, nor to any solicitation for the relief of any natural person specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected without any deduction whatever, shall be turned over to the named beneficiary , nor shall they be applicable to any organization soliciting contributions solely from members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary, or religious purposes. Provided, however that in any case where it shall come to the attention of the Department that any solicitation has been, is being or is intended to be, made for evangelical, missionary, or religious purposes, but in a manner which in the opinion of the Department, is calculated to give, or may give, the impression to the natural person or persons solicited in any such solicitations, or to the public, that the purpose of such solicitation is either in whole or in part charitable, the Department, if in its opnion the public interest will be

subserved thereby, shall investigate the matter of such solicitation and giver publicity to its findings in a manner as it deems best to advise the public of the facts of the case.

SEC. 44.13 HOURS OF SOLICITATION

(a) No person shall solicit any charitable contribution door-to-door between the hours of 8:00 p.m. and 8:00 a.m.

(b) No child under the age of 10 years shall solicit any charitable contribution unless accompanied by a responsible person who is 18 years of age or older and who shall at all times keep such child within the range of his her sight and hearing.

(c) No child under the age of 16 years shall solicit any charitable contribution between the time of sunset and 9:00 a.m.

SEC. 44.14 PROFESSIONAL FUND-RAISERS AND SOLICITORS:

(a) Professional Fund-Raisers.

No professional fund-raiser shall solicit charitable contributions for any actual or purported charitable purpose without a license issued by the Department. A licensed professional fund-raiser shall not solicit charitable contributions for any person without first notifying the Department. It shall be the responsibility of each licensed professional fund-raiser to notify the Department in writing of all contracts and working agreements with each charitable organization with which the professional fund-raiser is associated.

(b) Application.

Applicants shall file for a professional fund-raiser's license on form furnished by the Department.

(c) Fee.

A fee of $55.00, payable to the Department, shall accompany each application for a professional fund-raiser's license.

(d) Investigation.

The Department shall make as intensive an investigation of the applicant as it deems desirable, and shall verify:

(1) That the applicant is of good character;
(2) That the applicant has sufficient financial resources to be able to successfully fulfill such applicants obligations incident to a charitable solicitation; and
(3) That all statements in the application are true.

(e) Bond.

(1) At the time of filing an application for a professional fun-raiser's license, the applicant shall file with the Department satisfactory proof of the existence of a good and sufficient surety bond or bonds, in the aggregate sum of not less than $5,000.00, running to each person for whom the applicant proposes to solicit. Such bond or bonds shall be issued by a surety company authorized to do business in the State of California and shall provide for the reimbursement for direct loss money or property sustained through any dishonest or criminal act on the part of the applicant.

(2) Such bond or bonds or a substitute or substitutes therefor shall remain in force and effect for the entire period of the professional fund-raiser's license.

(3) Upon any recovery on any such surety bond by reason of any act of a professional fund-raiser, the Department shall forthwith suspend such professional fund-raiser's license.

(f) Issuance.

The Department shall issue to the applicant a license to solicit as a professional fund-raiser when all of the foregoing conditions are met. If all the forgoing conditions have not been met, the Department shall deny a license to the applicant, subject to the following conditions:

(1) The Department shall notify the applicant, in writing, no later than 15 days after the receipt of the complete application of the reasons for denial of a license;

(2) The applicant may appeal the denial of a license by written request filed with the Board within 10 days after notification of the denial;

(3) The Board shall schedule a hearing within 30 days after receipt of the request for appeal and shall send notice of the time and place of the hearing to the applicant by certified mail no later than 10 days prior to the date set for the hearing'

(4) The applicant and the Department may submit evidence relative to their respective positions in writing prior to the hearing or in writing or orally at the hearing;

(5) The hearing shall be held before the Board which shall notify the applicant in writing of its decision within 5 days after completion of the hearing process.

(g) Revocation.

A professional fund-raiser's license may be revoked if the Department finds that any act or omission of such professional fund-raiser or his or her agents or employees in making any solicitations or in the conduct of the business of a professional fund-raiser is illegal or fraudulent. The Department must revoke a professional fund-raiser's license if it finds the existence of any of the grounds upon which the issuance of such a license would be denied und er this Section. No revocation of a professional fund-raiser's license shall be effective except upon notice and an opportunity to be heard as provided in subsection (f) of this Section.

(h) Expiration.

Each professional fund-raiser's license shall expire 12 month's after issuance.

(i) Funds.

A professional fund-raiser shall not commingle charitable contributions with his or her funds or property.

(j) Solicitors.

(1) It shall be unlawful for any professional fund-raiser to cause or permit any person for compensation to solicit or receive any charitable contribution unless such person shall be licensed as a solicitor by the Department. Each solicitor shall be under the direction and control of a licensed professional fund-raiser.

(2) Except as provided in subsections (a) through (i) of this Section, no person shall for compensation solicit charitable contributions for or on behalf of any other person unless such former person is first licences by the Department.

(3) A fee of $18.00, payable to the Department, shall accompany each application for a solicitor's license. Each initial application shall be accompanied by the applicant's photograph and fingerprint's, on forms prescribed by the General Manager, and by a fingerprint processing fee payable to the Department. The General Manager of the Social Service Department is authorized to adjust the amount of the Department's fee for the processing of fingerprints so that it shall be equal in the amount to the State of California fee to the City of Los Angeles for the processing of fingerprints. The fingerprint processing fee shall not exceed the charged to the City by the State.

(4) No solicitor's license shall be issued unless the applicant files with the Department satisfactory proof of the existence of a good and sufficient surety bond or bonds, in the sum of not less than $1,000.00 each , running to each person for whom the applicant proposes to solicit. Such bond or bonds shall be issued by a surety company authorized to do business in the State of California and shall provide for reimbursement for direct loss of money or property sustained through any dishonest or criminal act on the part of the applicant. Such bond or bonds or substitute therefor shall remain in force and effect for the entire period of the solicitor's license. Upon any recovery on any such bond by reason of any act of a solicitor, the Department shall forthwith suspend the solicitor's license.

(5) A solicitor's license shall be issued upon verification by the Department of the good character of the applicant and that the applicant had not been convicted of a misdemeanor or felony.

(6) A solicitor must notify the Department in writing of any change of address and of any termination or change of employment.

(7) A solicitor's license may be revoked if the Department finds that any act or mission of such solicitor in making any solicitation is illegal or fraudulent. The Department must revoke a solicitor's license if it finds the existence of any grounds upon which the issuance of such license would be denied under this subsection. No revocation of a solicitor's license shall be effective except upon notice and an opportunity to be heard as provided in subsection (f) of this Section.

(8) Each solicitor's license shall expire 12 months after issuance.

SEC. 44.15 ENDORSEMENT:

The Department shall have the power to:

(a) To endorse, upon request, those charitable organization which submit to investigation and meet the following requirements:

(1) That a direct service program is provided to the community by the organization;

(2) That the work for which such organization was created has been performed;

(3) That a board of directors or trustees exercises full control and direction of the organization;

(4) That the members of the board of directors or trustees are not compensated for their services;

(5) That the compensated administrative head of the organization is not a member of the board of directors or trustees;

(6) That no monies of the organization are on loan directly or indirectly to any officer, director, trustee or employee thereof;

(7) That the organization has not paid out more than 20 percent of any amount collected by solicitation for expenses of solicitation and has not diverted funds donated to it from any source to purposes other than those for which they are donated;

(8) That for the period of one year prior to the endorsement the organization has kept its records in accordance with generally accepted accounting principles and standards for nonprofit organizations;

(9) That for the period of one year prior to the endorsement the organization has not violated any law applicable to it.

The Department shall issue said endorsement to any organization that complied with the aforementioned requirements. An endorsement shall be valid for one year from the date of its issuance or most recent renewal. Renewal of an endorsement may be granted upon the same conditions as an original endorsement may be issued;

(b) To refuse to endorse or revoke endorsement of an organization that does not comply with the requirements fo subsection (a) of this Section, subject to the following procedure:

(1) The Department shall notify the organization in writing of the reasons for denial or revocation of endorsement.

(2) The organization may appeal the denial or revocation of endorsement by written request filed with the Board within 10 days after notification of the denial or revocation. If an appeal is filed, the Department shall withhold making a final decision until the report of the Board has been received. If an appeal is not filed within the prescribed time limit, the decision to deny or revoke endorsement shall be final.

(3) The Board shall schedule a hearing within 30 days after receipt of the appeal and shall send notice of the time and place of the hearing to the organization by certified mail no later than 10 days prior to the date set for the hearing.

(4) The organization and the Department may submit evidence relative to their respective positions in writing prior to the hearing or in writing or orally at the hearing.

(5) The hearing shall be held before the Board which shall notify the Department of its findings within 5 days after completion of the hearing process.

(6) The Department shall consider the findings of the Board before making its decision final.

(7) The Department shall notify the organization of its decision within 10 days after receipt of the Board's findings.

(c) To convene on no less than an annual basis representatives of endorsed organizations to secure cooperation among charities in the City to the end that a comprehensive and economical plan in philanthropy is promoted;

(d) To waive the provisions of subsections (a) through (h) of Section 44.14 of this Article for any bona fide pad employee of an endorsed organization;

(e) To provide advice, counsel, and training opportunities to all charitable organizations in the City on the methods and procedures that lead to or help maintain endorsement.

VIOLATIONS OF THIS ARTICLE - PENALTY

The violation of any provision of this article shall be punishable as provided in Section 41.00 (m) of the Los Angeles Municipal Code.

BASIC STANDARDS IN PHILANTHROPY

The Social Service Department supports the National Charities Information Bureau (NCIB). The NCIB has established eight "basic standards in philanthropy." The standards can be used as a yardstick by anyone who wishes to measure the worth of a charity.

The eight basic standards are:

1. BOARD - An active and responsible governing body, holding regular meetings, whose members have no material conflict of interest and serve without compensation.
2. PURPOSE - A clear statement fo purpose in the public interest.
3. PROGRAM - A program consistent with the organization's stated purpose and its personnel and

financial resources, and involving interagency cooperation to avoid duplication of work.

4. EXPENSES - Reasonable program, management and fund-raising expenses.
5. PROMOTION - Ethical publicity and promotion excluding exaggerated or misleading claims.
6. FUND-RAISING - Solicitation of contributions without payment of commissions or undue pressure, such as mailing unordered tickets or merchandising, general telephone solicitation and use of identified government employees as solicitor.
7. ACCOUNTABILITY - An annual report available on request that describes program activities and supporting services in relation to expenses and that contains financial statements comprising of a balance sheet, a statement of support/revenue and expenses and changes in fund balances, a statement of functional expenses, and notes to financial statements, that are accompanied by the report of an independent public accountant. National organizations operating with affiliates should provide combined or acceptably compiled financial statements prepared in the forgoing manner.
8. BUDGET - Detailed annual budget approved by the governing body in a form consistent with annual financial statements.

You are reading this booklet because you are associated with a charitable fund-rasing event or campaign. The Social Service Department suggests that you compare these NCIB standards with the charity for which you are raising monies. If you see that the charity does not meet a standard(s) or does not do a good job in one of these areas covered by a standard,

you have an opportunity to help the charity become institutionally stronger.

Supreme Court, U.S.
FILED
SEP 10 2003
OFFICE OF THE CLERK

(2)

No. 03-208

IN THE

Supreme Court of the United States

GOSPEL MISSIONS OF AMERICA, ET AL.,
Petitioners
v.
CITY OF LOS ANGELES, ET AL.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROCKARD J. DELGADILLO,
City Attorney
EDUARDO A. ANGELES,
Managing Assistant City Attorney
JOHN M. WERLICH,*
Assistant City Attorney
**Counsel of Record*
JOCELYN CORBETT,
Certified Law Clerk

Los Angeles City Attorney's Office
Airport Division
1 World Way
Los Angeles, California 90045
(310) 646-3260
Attorneys for Respondents

21 pp

QUESTIONS PRESENTED

Does a party have standing to challenge a law when the party is not factually subject to the law?

Does a prior court's finding of standing to challenge provisions in a law preclude a re-determination of standing in a future action?

Does a party have a right to challenge specific provisions in a law when it could have challenged them in an earlier proceeding but chose not to do so?

PARTIES TO THE PROCEEDINGS

The identities of the petitioners in this court are set forth in the Petition for a Writ of Certiorari. The respondents are the City of Los Angeles, a municipal corporation in the State of California; Henry Acosta, as an individual and in his official capacity; Shirley Flucus, as an individual and in her official capacity; and Ronald E. Marbrey, as an individual and in his official capacity.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

OPINION BELOW.....1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 1

STATEMENT OF THE CASE 2

REASON WHY THE WRIT SHOULD BE DENIED 4

A. The Opinion Of The Court Of Appeals Does Not Conflict With Relevant Decisions Of This Court 4

B. The Opinion Of The Court Of Appeals Does Not Conflict With A Decision Of Another Circuit Court Of Appeals, Nor Does It Conflict With Decisions Within The Ninth Circuit 9

C. Petitioners Misapprehend The Crucial Nature Of A Federal Court's Need To Find Standing 10

TABLE OF CONTENTS (Cont'd)

Page

D. The Ninth Circuit Opinion Is Consistent With This Court's Decisions About Claim Preclusion 11

E. Petitioners' Argument That Claim Preclusion Does Not Apply Because Of The Addition Of New Plaintiffs Since The First Action Is Unavailing.....12

F. The Ninth Circuit Correctly Did Not Address Questions Concerning Section 44.04 12

CONCLUSION 13

TABLE OF AUTHORITIES

Cases **Page**

Arizonans for Official English v. Ariz.
520 U.S. 43, 64, 117 S.Ct. 1055, 1067, 137 L.Ed.2d 170 (1997) 11

Babbitt v. United Farm Workers Nat'l Union
442 U.S. 289, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979) 7

City of Lakewood v. Plain Dealer Publ'g Co.
486 U.S. 750, 108 S.Ct. 2138, 100 L.Ed. 771 (1988) 5

Doe v. Bolton
410 U.S. 179, 188, 93 S.Ct. 739, 745, 35 L.Ed.2d 201 (1973) 8

Epperson v. Ark.
393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d (1968) 6

Flast v. Cohen
392 U.S. 83, 94, 88 S.Ct. 1942, 1949, 20 L.Ed.2d 947 (1968)
.....11

Freedman v. Md.
380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965) ...7

Gospel Missions of America v. Bennett
951 F. Supp. 1429 (C.D. Cal. 1997) 2

TABLE OF AUTHORITIES (Cont'd)

Cases **Page**

Gospel Missions of America v. City of Los Angeles
328 F.3d 548 (9th Cir. 2003) 1

Hodel v. Irving
481 U.S. 704, 711, 107 S.Ct. 2076, 2080,
95 L.Ed.2d 668 (1987) 11

Migra v. Warren City Sch. Dist. Bd. Of Educ.
465 U.S. 75, 77 n.1, 104 S.Ct. 892, 892, 79 L.Ed.2d
56 (1984) 12

Poe v. Ullman
367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989
(1961) 10

San Francisco Democratic Cent. Comm. V. Eu
826 F.2d 814 (9th Cir. 1987) 9

Thornhill v. State of Alabama
310 U.S. 88, 97, 60 S.Ct. 736, 742, 84 L.Ed. 1093
(1940) 7

Younger v. Harris
401 U.S. 37, 42, 91 S.Ct. 746, 749, 27 L.Ed.2d 669
(1971) 8

Va. v. Am. Booksellers Ass'n, Inc.
484 U.S. 383, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988)
.....6

TABLE OF AUTHORITIES (Cont'd)

Page

United States Constitution

Article III, Section 2 Clause 1 1

Municipal Statute

Los Angeles Municipal Code
§§ 44.00 - 4415 2
§ 44.04 12
§ 44.15 11

Rules of Court

Supreme Court Rule 10 10

OPINION BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit is reported, *Gospel Missions of America v. City of Los Angeles*, 328 F.3d 548 (9th Cir. 2003). The Opinion of that court is set forth as Appendix A to the Petition for Writ of Certiorari (Petition)[1].

JURISDICTION

Respondent does not disagree with the statement of jurisdiction set forth in the Petition.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent does not disagree with the statement of constitutional and statutory provisions at issue as set forth in the Petition, but notes that in addition to the provisions listed, the following should be included:

Article III, Section 2, Clause 1 of the United States Constitution:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases

---

[1] Petitioners mis-lettered their Appendices in the body of the Petition; Respondents will cite to the Appendix at which an opinion, order, etc., is actually set forth in the Petition.

affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different states, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

In 1994, Gospel Missions of America (Gospel Missions) filed a complaint in the District Court for the Central District of California, against the City of Los Angeles (City), challenging in its entirety the City's Charitable Solicitation Law (Ch. Sol. Law), Los Angeles Municipal Code §§ 44.00 – 44.15. District Court Judge Wardlaw ordered Gospel Missions to indicate specifically which provisions it was challenging, and to provide supporting legal authority for each such challenge. This was an important order, given that the Ch. Sol. Law contains over one hundred sections, subsections, and sub-subsections, many of which are mutually exclusive. Gospel Missions responded to Judge Wardlaw's order, choosing to challenge some provisions, yet leaving many provisions unchallenged.

Judge Wardlaw issued a published decision[2], holding some provisions of the Ch. Sol. Law to be unconstitutional

---

[2] *Gospel Missions of America v. Bennett*, 951 F. Supp. 1429 (C.D. Cal. 1997) [set forth in Petition for Writ of Certiorari as Appendix G].

and others to be constitutional, but did not discuss those provisions which Gospel Missions chose not to challenge. In 1997, the City of Los Angeles carefully revised various provisions of the Ch. Sol. Law in compliance with Judge Wardlaw's holding; it deleted passages that Judge Wardlaw said were facially unconstitutional, and added language to some provisions to more narrowly tailor their requirements.

In 1999, Gospel Missions filed another complaint, alleging contempt of Judge Wardlaw's injunction, and challenging the constitutionality of amended and non-amended provisions. The contempt allegation was the appropriate mechanism for Gospel Missions to enforce the earlier decision. And indeed, District Court Judge Wilson, in the second action, addressed Gospel Missions' contempt allegations and constitutional challenges, albeit not in Gospel Missions' favor.

In 2000, Gospel Missions appealed Judge Wilson's decision, arguing in part that the question of whether they had standing to challenge certain provisions in the Ch. Sol. Law was issue precluded by Judge Wardlaw's earlier decision. In 2003, the Court of Appeals held that standing was not issue precluded by the first case, found petitioners did not have standing to challenge those provisions, and accordingly upheld Judge Wilson's holdings as to those sections. Opinion at 555. Additionally, the Court of Appeals held that petitioners were claim precluded from challenging other sections, because they could have challenged those sections in the first complaint but chose not to do so. Opinion at 556. Further, the Court held that Gospel Missions and each of the individual members in the second action were either parties to or in privity with the parties to the first action. Opinion at 556-557. The Court made this holding because Gospel Missions specifically

stated that Gospel Missions and the individual plaintiffs were in privity with the plaintiffs from the first action.

Finally, the Court of Appeals remanded to the District Court for further proceedings concerning Gospel Missions' challenge to two subsections of the Ch. Sol. Law on vagueness, overbreadth, and equal protection grounds. Opinion at 556. Indeed, petitioners and respondents have filed pleadings on the matter to Judge Wilson, and arguments are scheduled to be heard on September 15, 2003.

REASONS WHY THE WRIT SHOULD BE DENIED

This case does not meet the criteria for the issuance of a writ of certiorari as set forth in Rule 10 of the Rules of this Court, and the Petition should be denied. Petitioners have offered no compelling reason why the writ should be granted. The decision of the Ninth Circuit Court of Appeals does not conflict either with the decisions of this Court or of other circuits of the Courts of Appeals.

Further, as part of the case was remanded to the trial court for further proceedings, the Ninth Circuit decision cannot be considered to be a final judgment; accordingly, it is not appropriate for petitioners to request a writ by this Court at this time.

A. The Opinion Of The Court Of Appeals Does Not Conflict With Relevant Decisions Of This Court.

Petitioners cite five decisions of this Court finding a party had standing to challenge an ordinance even though the ordinance had not been enforced against the party. Petitioners fail, however, to provide any analysis which

demonstrates the similarities of those decisions with the opinion of the Ninth Circuit in this case. Petitioners merely list the decisions and provide a one-sentence parenthetical description of the holding in each case. This is not sufficient to demonstrate a conflict between these cases and the Ninth Circuit Opinion. Petitioners offer these cases as analogous to the facts of the instant case, and therefore contend that a conflict exists. This is not an accurate analogy.

These Supreme Court decisions have one thing in common: whether the statute had been enforced or not, whether a license had been applied for or not, the plaintiffs were subject to the statute and/or license requirements.

Respondents provide a brief summary of each referenced decision for the Court's convenience:

City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988).

Plain Dealer wanted to put coin-operated newspaper dispensing devices on city sidewalks. The City of Lakewood had an ordinance which prohibited placement of a private structure on public property. After losing at the District Court, the City was given an opportunity to amend its law. Plain Dealer was not satisfied with this amended version, chose not to apply for a permit, and amended its complaint to challenge the amended law. *Id.* at 754. The Court found Plain Dealer had standing to bring a facial challenge to the ordinance, even though they had not applied for a permit.

> "Recognizing the explicit protection accorded speech and the press in the text of the First Amendment, our cases have long held that when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or

> deny expressive activity, one who is subject to the law may challenge it facially without the necessity of first applying for, and being denied, a license."
> 486 U.S. at 755, 756 [emphasis added].

Va. v. Am. Booksellers Ass'n, Inc., 484 U.S. 383, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988).

Virginia enacted a statute, similar to one upheld by this Court in an earlier case, "prohibiting sale to those under seventeen of materials deemed harmful to juveniles." *Id.* at 386. Virginia later amended the law to make it a crime to "knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse" these materials. *Id.* at 387. American Booksellers challenged the amended statute before it became effective. Virginia argued that they lacked standing because they did not suffer sufficient harm and that the harm was economic rather than speech related. *Id.* at 392. Further, the state argued the challenge was premature, because the statute had not yet become effective. *Id.* Because plaintiffs "alleged an infringement of the First Amendment rights of bookbuyers," the Court found they had standing to challenge the ordinance. *Id.* at 393. The Court also found it was acceptable for plaintiffs to have challenged the ordinance before it became effective, because they "have alleged an actual and well-founded fear that the law will be enforced against them." *Id* [emphasis added].

Epperson v. Ark., 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

Arkansas adopted a statute in 1928 which prohibited the teaching of evolution in public schools. In 1965, the high school at which Epperson taught biology decided to assign a

textbook which included evolutionary theory. Concerned that she would be subject to dismissal by violating the 1928 statute, Epperson brought an action for declaratory and injunctive relief.

The majority opinion did not directly address standing. Justice Black's concurring opinion voiced concern of lack of a genuine case or controversy because the statute had never been enforced. However, counsel for Arkansas stated that, as a teacher in Arkansas public school system, Epperson would be subject to liability under the statute.

Freedman v. Md., 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965).

Freedman, a film exhibitor, challenged Maryland's censorship statute, which required exhibitors to first submit a film to the State Board of Censors and receive a license before exhibiting the film. Freedman had not submitted a film to the Board before filing his complaint. Freedman was found to have standing even though he had not first attempted to obtain the license because he was subject to the ordinance in its allegedly overly-broad form. "'One who might have had a license for the asking may ... call into question the whole scheme of licensing when he is prosecuted for failure to procure it.'" *Id.* at 56, citing *Thornhill v. State of Alabama*, 310 U.S. 88, 97, 60 S.Ct. 736, 742, 84 L.Ed. 1093 (1940).

Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979).

United Farm Workers National Union (UFW) challenged Arizona's Agricultural Employment Relations Act. The District Court had ruled on five provisions. The

Supreme Court found that UFW had standing to challenge three of the provisions, but did not have standing for the other two. Among the challenged provisions was a section specifying election procedures for employee representation. The Court found standing for this section even though UFW had not first attempted to invoke the Act's election procedures, because it was "not for lack of interest in representing Arizona farmworkers in negotiations with employers, but due to the procedures' asserted futility. Indeed the UFW has in the past sought to represent Arizona farmworkers and has asserted in its complaint a desire to organize such workers and to represent them in collective bargaining." *Id.* at 300. In its general discussion of standing, the Court noted:

> "When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he 'should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.' *Doe v. Bolton*, 410 U.S. 179, 188, 93 S.Ct. 739, 745, 35 L.Ed.2d 201 (1973). But 'persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs.' *Younger v. Harris*, 401 U.S. 37, 42, 91 S.Ct. 746, 749, 27 L.Ed.2d 669 (1971)."
>
> 442 U.S. at 298 [emphasis added].

In the instant matter, petitioners are not and never have been subject to the professional fundraiser provisions

they wish to challenge[3]. Contrary to petitioners' assertion, standing is not denied merely because the City has not attempted to enforce the provisions against Gospel Missions. Rather, because these provisions can never be enforced against Gospel Missions, petitioners lack standing to challenge the provisions. Accordingly, petitioners' attempt to show a conflict between the Ninth Circuit Opinion and the Supreme Court cases referenced is unavailing.

B. The Opinion Of The Court Of Appeals Does Not Conflict With A Decision Of Another Circuit Court Of Appeals, Nor Does It Conflict With Decisions Within The Ninth Circuit.

Petitioners offer no evidence that the Ninth Circuit Opinion conflicts with the decisions of other Circuit Courts of Appeal.

The sole case petitioners cite for the proposition that the Ninth Circuit Opinion conflicts with its own decisions is *San Francisco Democratic Cent. Comm. v. Eu*, 826 F.2d 814 (9th Cir. 1987). Just as the Supreme Court decisions relied on do not help the petitioners' position, *Eu* too does not support their argument.

Eu concerned a challenge to sections of the California Elections Code, which "specify the membership of the state central committees of ballot-qualified political parties ... and prohibit both state and county central committees from endorsing candidates in party primaries." *Id.* at 817. Various county and state central committees challenged these sections. The State argued that the plaintiffs failed to raise a justiciable controversy, and that

---

3 Appendix F at 44a.

they lacked standing. *Id.* at 821. Justiciability was challenged because the State asserted that these provisions had never been enforced; the State relied on *Poe v. Ullman*, 367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961). In that case, a "ban on contraceptives was not justiciable because the ban had never been enforced during its seventy-five year history, even though 'contraceptives [were] commonly and notoriously sold...'" *Id.* at 822 [internal cite omitted]. The Ninth Circuit distinguished the facts of *Eu*, finding "no record that the relevant provisions have been 'commonly and notoriously' violated." *Id.*

The facts of *Eu* demonstrate that those plaintiffs were or would have been subject to the provisions, whether the provisions had ever been enforced or not. In the instant matter, Gospel Missions are not subject to the professional fundraiser provisions, and thus could never have those provisions enforced against it. Petitioners' attempt to analogize to *Eu*, as is their attempt to analogize to the Supreme Court decisions, is unavailing.

C. Petitioners Misapprehend The Crucial Nature Of A Federal Court's Need To Find Standing.

Petitioners argue that standing should have been issue precluded in the instant matter, and that the Ninth Circuit erred by making its own determination on the question of standing. This is patently contradictory to well-established principles of justiciability.

"The jurisdiction of federal courts is defined and limited by Article III of the Constitution. In terms relevant to the question for decision in this case, the judicial power of federal courts is constitutionally restricted to 'cases' and 'controversies.'" *Flast v. Cohen*, 392 U.S. 83, 94, 88 S.Ct.

1942, 1949, 20 L.Ed.2d 947 (1968). "The existence of a case or controversy is a jurisdictional prerequisite to a federal court's deliberations." *Hodel v. Irving*, 481 U.S. 704, 711, 107 S.Ct. 2076, 2080, 95 L.Ed.2d 668 (1987).

"The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Ariz.*, 520 U.S. 43, 64, 117 S.Ct. 1055, 1067, 137 L.Ed.2d 170 (1997).

The Ninth Circuit in the instant matter correctly and necessarily made its own determination as to whether petitioners had standing for the professional fundraiser provisions.

D. The Ninth Circuit Opinion Is Consistent With This Court's Decisions About Claim Preclusion.

Petitioners argue that the Ninth Circuit erred when it found petitioners may not challenge § 44.15 (the endorsement provision) of the Ch. Sol. Law because Gospel Missions never sought endorsement. However, petitioners' argument is based on the original Ninth Circuit Opinion,[4] which was withdrawn by the Ninth Circuit, and superceded by its current Opinion.[5] In the current published Opinion, the Ninth Circuit stated that the doctrine of claim preclusion barred petitioners from challenging this section, because they could have challenged it in the earlier proceeding but chose not to do so. Opinion at 556.

---

4 Set forth in Petition for Writ of Certiorari as Appendix E.

5 Set forth in Petition for Writ of Certiorari as Appendix A.

This Court has described claim preclusion as "the effect of a judgment in foreclosing litigation of a matter that has never been litigated, because of a determination that it should have been advanced in an earlier suit." *Migra v. Warren City Sch. Dist. Bd. Of Educ.*, 465 U.S. 75, 77 n.1, 104 S.Ct. 892, 892, 79 L.Ed.2d 56 (1984).

E. Petitioners' Argument That Claim Preclusion Does Not Apply Because Of The Addition Of New Plaintiffs Since The First Action Is Unavailing.

Petitioners try to argue that claim preclusion should not be applied in this matter because twenty of the twenty-six individual plaintiffs in the case were not part of the first action. Opinion at 556. This is a specious argument. Petitioners themselves stated in their complaint that the individual plaintiffs are members of Gospel Missions of America, and are in privity with the original plaintiffs. Opinion at 557.

F. The Ninth Circuit Correctly Did Not Address Questions Concerning Section 44.04.

Petitioners argue that "the appellate panel completely ignored Gospel Missions' challenge to section 44.04." Petition for Writ at 15. This is inaccurate. The Ninth Circuit did not address petitioners' challenge to this section because Gospel Missions' Opening Brief on Appeal to the Ninth Circuit contained no challenge to this section. The Ninth Circuit could not "ignore" a challenge that was not timely made.

CONCLUSION

The Ninth Circuit Opinion did not conflict with decisions of this Court, or with those of other Courts of Appeal or of its own circuit. It correctly applied well-established principles of justiciability and claim preclusion.

Petitioners have failed to provide any compelling reasons why petition should be granted in this matter. The case does not meet the criteria for issuance of a writ of certiorari, and the petition for a writ should be denied.

Dated: September 9, 2003

Respectfully submitted,

ROCKARD J. DELGADILLO,
City Attorney
EDUARDO A. ANGELES,
Managing Assistant City Attorney
JOHN M. WERLICH,*
Assistant City of Attorney
* *Counsel of Record*
JOCELYN CORBETT,
Certified Law Clerk

Los Angeles City Attorney's Office
Attorneys for Respondents